



Comptroller of the Currency
Administrator of National Banks

ACTIVITIES PERMISSIBLE FOR A NATIONAL BANK



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OFFICE OF THE COMPTROLLER OF THE CURRENCY
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Table of Contents

Permissible Activities Generally.....	1
Branching.....	1
Consulting and Financial Advice.....	1-4
Corporate Governance	4 -5
Correspondent Services	5-7
Finder Activities	7-8
Leasing	8-11
Lending.....	11-15
Other Activities.....	15-18
Payment Services.....	18-19
Fiduciary Activities.....	19-20
Insurance and Annuities Activities	20
Insurance Underwriting and Reinsurance	20-22
Reinsurance.....	22-23
Title Insurance	23
Preemption	23-30
Securities Activities	30-34
Technology and Electronic Activities.....	34
Digital Certification	34
Electronic Bill Payments.....	35
Dispensing Prepaid Alternative Media for ATMs	35
Electronic Bill Presentment	35
Electronic Data Exchange (EDI) Services.....	35
Electronic Toll Collection.....	35
Merchant Processing of Cards Via the Internet	36
Stored Value	36
Electronic Commerce.....	36-38
Electronic Correspondent Services	38
Internet Access Service.....	38
Internet and PC Banking.....	38
Software Development and Protection	39-40
Investments	40-49

Activities Permissible for a National Bank

National banks (NBs) may engage in activities that are part of, or incidental to, the business of banking, or are otherwise authorized for a NB. The business of banking is an evolving concept and the permissible activities of NBs similarly evolve over time. Accordingly, this list is not exclusive; the OCC may permit NBs to conduct additional activities in the future. Any activity described in this summary as permissible for a NB is also permissible for an operating subsidiary of a NB. The reverse is also true: any activity described as permissible for an operating subsidiary is also permissible for the bank to engage in directly.

Permissible Activities Generally

Branching

- *Loan Approval and Misdirected Payments at LPO.* Loan approval and the occasional receipt of misdirected loan payments from customers may take place at an LPO without causing it to become a branch. Interpretive Letter 902 (November 16, 2000).
- *LPO/DPO/ATM Facilities Not Subject to State Branch Restrictions.* NB LPO/DPO/ATM facilities are not "branches" subject to 12 U.S.C. 36 and state law incorporated therein. In isolation or in combination, LPOs (loan production offices), DPOs (deposit production offices), and ATMs are not branches and so are not subject to state law restrictions on branching. None of these facilities perform any of the three core functions of banking, *i.e.*, receiving deposits, paying checks, and lending money. *First National Bank of McCook v. Fulkerson*, 98-D-1024 (USDC CO - March 10, 2000).
- *Retention of Branches of Converted Federal Savings Bank.* Federal savings bank may convert to a NB, the resulting NB may retain all the branches of the savings bank in states where the NB did not have branches, and the NB may merge into an affiliated NB and retain all the branches resulting from the previous transaction. Corporate Decision No. 2000-05 (March 28, 2000).

Consulting and Financial Advice

- *Financial Adviser, In General.* NBs can provide financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940). 12 USC 24(Seventh). The following are examples of these services:
 - *Adviser for Mortgage or Real Estate Investment Trusts.* NBs may serve as the advisory company for a mortgage or real estate investment trust. 12 CFR 5.34(e)(2)(ii)(I)(1).

- *Benefits Counseling.* NBs operating subsidiary may provide Medicare and Medicaid counseling to customers and collect and disburse insurance benefit payments. Corporate Decision No. 98-13, 1999 OCC QJ LEXIS 22 (Feb. 9, 1998).
- *Business Services for the Bank or its Affiliates.* NBs may furnish services for their internal operations or the operations of their affiliates, including: accounting, auditing, appraising, advertising and public relations, data processing and data transmission services, databases, or facilities. Interpretive Letter No. 513, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83-215 (June 18, 1990).
- *Consumer Financial Counseling.* NBs may provide consumer financial counseling. Interpretive Letter No. 137, *reprinted in* [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,218 (December 27, 1979); Interpretive Ruling (July 17, 1986); Interpretive Letter No. 367, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,537 (August 19, 1986); 12 CFR 5.34(e)(2)(ii)(I); 12 CFR 9.101.
- *Economic Analysis.* NBs may furnish general economic information and advice, economic statistical forecasting services, and industry studies.
- *Employee Benefits.* NBs may offer employee benefit consulting services (including health benefit consulting) to corporations wishing to establish qualified benefit plans and relocation consulting for employees of a bank or its affiliates, or customers of the bank. Corporate Decision No. 98-51, 1999 OCC QJ LEXIS 28 (November 30, 1998). NB's operating subsidiary may also provide Medicare and Medicaid counseling to customers and collect and disburse insurance benefit payments. Corporate Decision No. 98-13, 1999 OCC QJ LEXIS 22 (Feb. 9, 1998).
- *Employee Relocation Benefit Consulting Service.* NBs operating subsidiary may provide employee relocation benefit consulting services to small- and medium sized business customers of the bank and their employees. The service consist of financial planning and counseling, mortgage lending, and acting as a finder, each of which is a permissible banking activity. Corporate Decision No. 99-43 (November 29, 1999).
- *Financial Consulting and Advisory Services.* NBs may engage in financial consulting and advisory services for other financial institutions and the general public, including, among other things,

acting as a conduit in conveying loan terms to prospective borrowers or purchasers, supplying financial information regarding a third party, or engaging on behalf of others in research in contemplation of prospective transactions. 12 USC 24(Seventh), 92a; Interpretive Letter No. 238, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,402 (February 9, 1982).

- *Financial Planning and Insurance.* NB may sell a small amount of longterm care and disability insurance and group health, medical, and dental insurance plans in connection with the comprehensive financial planning and employee benefits consulting services offered by the NB. Letter from Julie L. Williams, Chief Counsel, dated January 19, 1999; Letter from Julie L. Williams, Chief Counsel, dated December 30, 1997.
- *Fiscal Planning Advice to Municipalities.* NBs may offer fiscal planning advice on such questions as the timing and structure of bond issues to municipalities. Interpretive Letter No., 122, [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,203 (August 1, 1979). They may also offer financial advice regarding public offerings of debt or equity, private placements, sale-leasebacks, and purchases and sales of companies. Interpretive Letter (July 22, 1974).
- *Human Resources Services.* NB's operating subsidiary may provide human resources and related services to small business clients, including: acting as co-employer of customers' employees (employee "leasing"); payroll processing; employee benefits consulting and human resources administrative services; compliance administration and safety and risk management; the sale of certain insurance products to employees through an insurance agency subsidiary; and insurance-related administrative services. Conditional Approval No. 384 (April 25, 2000).
- *Part of, or Incidental to, Investment Advisory Services.* NB's investment management operating subsidiary may hold small interest in certain investment funds, subject to limitations, but only when the holding is necessary to conduct permissible investment advisory activities. Investors in these funds require investment advisors to hold small interests to enhance the alignment of interests between advisors and investors. Certain of the funds may contain bank-ineligible financial instruments, including equity securities. Interpretive Letter No. 897 (October 23, 2000); Letter from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, dated October 1, 1999.
- *Tax Services.* NBs may provide tax planning and preparation services. 12 USC 24(Seventh); 12 CFR 7.1008.

- *"Welfare-to-Work" Counseling.* NB's's operating subsidiary may acquire a company engaged in providing government "welfare-to-work" counseling. The acquired company counsels welfare-to-work program beneficiaries on work skills and program benefits, connects them with potential employers, and handles payments from the sponsoring government agency to employers and employees participating in the program. Corporate Decision No. 2000-11 (June 24, 2000).
- *Transactional Advice, In General.* NBs may provide financial and transactional advice to customers and assist customers in structuring, arranging, and executing various financial transactions. 12 USC 24(Seventh). The following are examples of these services.
 - *Commercial Real Estate Equity Financing.* NBs may arrange for commercial real estate equity financing. Interpretive Letter No. 387, reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85, 611 (June 22, 1987); Interpretive Letter No. 271, reprinted in [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85, 435 (September 21, 1983).
 - *Economic Research.* NBs may conduct financial feasibility studies. 12 USC 24(Seventh).
 - *Mergers, Acquisitions, Divestitures, Joint Ventures, Leveraged Buyouts, Recapitalizations, Capital Structurings, and Financial Transactions.* (Including private and public financings and loan syndications). 12 USC 24(Seventh). NBs may provide financial and transactional advice in connection with the previously mentioned activities. 12 CFR 9.101.

Corporate Governance

- *Capital Reduction with Voluntary Liquidation.* NB that has discontinued banking operations may reduce its permanent capital provided that the disbursement of capital is made pursuant to a plan of voluntary liquidation. Conditional Approval No. 410 (August 20, 2000).
- *Election of Corporate Governance Provisions of the Model Business Corporation Act.* A NB may adopt corporate governance provisions of the Model Business Corporation Act (MBCA) and engage in a share exchange to ensure that its newly formed parent holding company will own 100 percent of the bank. MBCA provision allowing share exchanges are not inconsistent with applicable federal banking statutes or regulations. A NB conducting a share exchange under the MBCA must provide adequate dissenters' rights that are

substantially similar, although not necessarily identical to those in section 215a. Interpretive Letter No. 891 (April 26, 2000).

- *Election of Virginia Corporate Governance Provisions.* A NB may elect the corporate governance provisions of Virginia law and complete a share exchange in accordance with those provisions. Virginia state law allowing share exchanges is not inconsistent with applicable federal banking statutes or regulations. A NB conducting a share exchange must provide adequate dissenters' rights that are substantially similar, although not necessarily identical to those in section 215a. Interpretive Letter No. 879 (November 10, 1999).

Correspondent Services

- *Correspondent Services, In General.* NBs may hold deposits for other banks and perform correspondent services for those banks, such as check clearing. Other examples of correspondent services are:
 - *ATM Sales to Other Banks and ATM Services.* NBs may purchase ATMs for resale to other banks, who will be in the same shared network, convert their own ATMs into a shared network, and provide services for other banks in the network. Interpretive Letter (October 2, 1975); No-Objection Letter No. 87-11, [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,040 (November 30, 1987).
 - *Disaster Relief Services.* NBs may market disaster relief services to other banks, including sharing of premises and data processing equipment. Interpretive Letter (June 13, 1990).
 - *Electronic Imaging Services.* NBs may provide electronic imaging services to banks and other financial firms. Interpretive Letter No. 805, reprinted in [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-252 (October 9, 1997).
 - *Financial and Consulting Services.* NBs may offer financial and consulting services, including market research and analysis, strategic planning, advertising and promotion planning, product development, personnel management, employee relations, affirmative action, and salary and benefit plans to banks and commercial customers. Interpretive Letter No. 137, reprinted in [1981-1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,218 (December 27, 1979).
 - *Flood Hazard Determinations.* NB may establish an operating subsidiary that makes flood hazard determinations for the bank, its affiliates, and unaffiliated mortgage lenders. Corporate Decision No. 97-79, 1998 OCC QJ LEXIS 6 (July 11, 1997).

- *Internal Security Consulting Services.* NBs may provide internal security consulting services, including security and guard services at affiliate banks and nonbank affiliates and may install and maintain vaults, locks, and ATMs for third-party banks. Interpretive Letter No. 398, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,622 (September 28, 1987).
- *Investment Portfolio Management Service.* NB may establish an operating subsidiary to provide investment portfolio management services and computer networking services for the bank and other financial institutions. Interpretive Letter No. 754, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep (CCH) ¶ 81,118 (November 6, 1996).
- *Loan Collection and Repossession Services.* NBs may offer loan collection and repossession services for other banks and thrifts. Interpretive Letter (December 14, 1983); Interpretive Letter (March 15, 1971).
- *Other Correspondent Services.* NBs may print and market checks, drafts, loan payment coupons, and other banking documents; perform tax planning and tax preparation assistance; and perform financial data processing for correspondent banks. Interpretive Letter (February 11, 1980); Interpretive Letter (October 14, 1975).
- *Payment and Information Processing Services.* NBs may establish an operating subsidiary that engages in payment and information processing services. The subsidiary may own/operate/sell electronic data processing and data interchange facilities, which will be used to communicate billing and payment related information to insurance carriers responsible for paying for medical benefits. The subsidiary may provide computer network services, including necessary hardware to financial institutions. Corporate Decision No. 98-12, 1998 OCC QJ LEXIS 130 (February 9, 1998); Interpretive Letter No. 712, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-027 (February 29, 1996); Interpretive Letter No. 718, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-033 (March 14, 1996). NBs may also provide lockbox services. Interpretive Letter No. 635, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,519 (July 23, 1993). NBs may perform processing of county tax assessments, tax bills, and water and sewer bills. Interpretive Letter (April 15, 1975).
- *Vault Cash.* NB may establish a correspondent account at an unaffiliated bank in another state to provide vault cash for the bank's

customers in the state. Interpretive Letter No. 796, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,223 (August 18, 1997).

Finder Activities

- *Transaction Finders, In General.* NBs may serve as finders for certain goods and services, *i.e.*, they may bring parties together for a transaction that the parties themselves negotiate and consummate. 12 USC 24(Seventh); 12 CFR 7.1002. NBs may advertise and accept fees for their finder services. Finder activities include, but are not limited to, identifying potential parties, making inquiries as to interest, making introductions or arranging meetings of interested parties and otherwise bringing parties together for a transaction that the parties themselves negotiate and consummate. The following are examples of these services:
 - *Acting as Finder for Automobile Club.* NBs may sell memberships as agent for an automobile club. No Objection Letter No. 89-02, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83, 014 (April 17, 1989)
 - *Acting as Finder for Automobile Sales.* NBs may act as finders for automobile sales and financing through databases, call centers, and internet services. 12 CFR 7.1002 and 7.1019; Interpretive Letter No. 741, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-105; Corporate Decision No. 97-60 (July 1, 1997).
 - *Acting as a Finder for Government Entities.* NBs may provide electronic finder, custodian, record keeping, and financial agent services primarily to government entities. Permissible activities include providing a financial and banking data match program to enable states to match data on delinquent, noncustodial parents; an Internet-based electronic service that provides a catalog of services of state or federal agencies available to the public; and electronic service for state governments to process motor vehicle title applications and related payments via the Internet; and the operation of a backup call center for a federal agency. Conditional Approval No. 361 (March 3, 2000).
 - *Acting as Finder by Hosting Commercial Web Site for Small Retailers.* NBs can host commercially enabled web sites for small retailers as a form of electronic “finder” activity. Interpretive Letter No. 856, *reprinted in*, [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-313 (March 5, 1999).

- *Acting as Finder for Health Care Programs.* NBs may provide medical insurance cost information, benefits counseling, premium collection and disbursement and related activities. OCC Corporate Decision No. 98-13, 1999 OCC QJ LEXIS 22 (Feb. 9, 1998).
- *Acting as Finder for Insurance.* NBs may provide finder services in connection with insurance products and services. To identify permissible NB finder arrangements in the insurance context (as an alternative to section 92 authority), the OCC considers; (1) the scope of the proposed activities; (2) the existence or absence of another insurance agent or broker in the arrangement; (3) whether the bank has a contractual relationship with an insurance company for selling its products, and if so, the nature of relationship with an insurance company for selling its products, and if so, the nature of the relationship; and (4) the bank's compensation arrangement for the proposed activities. For example, NBs may participate in sharing arrangements with other banks whereby they combine their efforts to use the services of a group of independent agencies that would solicit and sell insurance services to bank customers on site, sharing pro rata in referred business. Interpretive Letter No. 824, *reprinted in*, [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-273 (February 27, 1998).
- *Acting as Finder for Internet Vendors.* NBs may provide to their customers links to non-banking, third-party vendors' internet website. 12 CFR 7.1002; Conditional Approval No. 221 (December 4, 1996); Interpretive Letter No. 611, *reprinted in* [1992-1993 Transfer Binder] Fed. Banking Law Rep. (CCH) ¶ 83, 449 (November 23, 1992).
- *Acting as Finder for Investment Advisory Services.* NBs may act as finder by referring bank customers to investment advisors. Interpretive Letter No. 850 (January 27, 1999), *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,202 (May 18, 1990); Interpretive Letter (January 20, 1988).

Leasing

- *In General.* NBs may engage in personal property leasing activities under two separate authorities, 12 USC 24(Seventh) and 12 USC 24(Tenth).
- *CEBA Leases.* NB may invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for the purpose of, or in connection with leasing that property, if the aggregate book value of the property does not exceed 10 percent of the bank's consolidated assets and the related lease is a conforming lease. 12 USC 24(Tenth). Interpretive Letter No. 770, *reprinted in* [1996-1997 Transfer Binder] Fed.

Banking L. Rep. (CCH) ¶ 81,134 (February 10, 1997). NBs may also engage in lease financing if the lease is the functional equivalent of a loan under section 24(Seventh). The OCC has interpreted this to mean that section 24(Seventh) leases must be net, full-payout leases. Under this requirement, NBs may rely on the estimated residual value only to a limited extent, *i.e.*, the unguaranteed portion of the estimated residual value relied upon by the bank, plus the estimated cost of financing the property, must not exceed a specified percentage of the original cost of the property to the lessor. 12 CFR 23.

- *Consulting Services Relating to Leasing.* NBs may engage in property leasing activities through a subsidiary, including lease consulting services, finder services, and lease servicing. Interpretive Letter No. 567, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,337 (October 29, 1991); 12 CFR 5.34(e)(2)(ii)(M).
- *Data Processing Equipment Leasing.* NB's operating subsidiary may enter into a general partnership with a corporation for the leasing of electronic data processing equipment on a net, full-payout basis. Interpretive Letter No. 369, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,539 (September 25, 1986).
- *DPC Property Leases.* NBs may enter into a lease agreement regarding Debt Previously Contracted (DPC) property, subject to conditions and limitations. Interpretive Letter No. L-5, *reprinted in* [1977-1978 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,022 (September 2, 1977); 12 USC 29(First).
- *Equipment and Personal Property Leasing.* NBs may invest in tangible personal property, including without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, provided the aggregate book value of all such property does not exceed 10 percent of the consolidated assets of the bank. 12 USC 24(Seventh); 12 CFR 23.7; Interpretive Letter No. 567, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83, 337 (October 29, 1991); Interpretive Letter No. 556, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,306 (August 6, 1991).
- *Excess Space.* NBs may lease excess space on bank premises to other businesses, share space with other businesses, or offer its services in space owned or leased to other businesses. 12 CFR 7.3001.
- *Lease Financing, Historic Preservation.* NBs can establish operating subsidiaries to acquire a leasehold interest in historic buildings and thus acquire the tax credits associated with those buildings. This allows the bank to reduce the borrower's costs of financing the rehabilitation and at the same time earn an improved return. The substance of this type of transaction is a

financing. Corporate Decision No. 99-07, 1999 OCC QJ LEXIS 97 (March 26, 1999).

- *Lease Interest in Natural Gas.* NB's operating subsidiary may own an interest in a natural gas lease when ownership interest is equivalent to secured lending. Corporate Decision No. 98-17 (March 23, 1998). NBs may acquire an otherwise impermissible property interest in minerals, *e.g.*, oil and gas production payments, when it is acquired in connection with the bank's express power to lend money. Interpretive Letter (October 4, 1994).
- *Lease of Personal Property for Bank's Use.* NBs may be the lessee of personal property for their own use. Interpretive Letter (July 14, 1976).
- *Lease of Public Facilities.* NBs may lease a building to a municipality as long as the lease agreement provides that the municipality will become owner of the building on expiration of the lease. 12 CFR 7.1000(d).
- *Lease of Real Property.* NBs may lease real property that is incidental to a permissible lease of personal property, *e.g.*, land upon which a leased manufacturing facility stands. Interpretive Letter No. 770, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-134 (February 10, 1997); Corporate Decision No. 98-35, 1999 OCC QJ LEXIS 189 (June 10, 1998).
- *Leasing Bank Employees from Third Party.* NBs may lease the services of its employees from a third party as long as the board of directors continues to retain and exercise general supervision over the affairs of bank. Interpretive Letter No. 431, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,655 (November 5, 1987); 12 CFR 7.2010.
- *Leasing Bank Lobby to Securities Brokers, Real Estate Brokers, Insurance Agents, and Travel Agents.* NBs may lease bank premises to unaffiliated entities and the rental payments made to the bank may be based on a percentage of gross commissions received by the tenant. 12 CFR 7.3001(a).
- *Leasing/Selling Excess Capacity.* NB may lease excess monitoring capacity of its security/fire alarm system or other equipment to other financial institutions. Interpretive Letter (September 17, 1987). NBs may market excess capacity on mail sorting equipment to other companies and may resell excess capacity on their long line telecommunications and data processing equipment to third parties. Interpretive Letter (December 13, 1983); Interpretive Letter (December 20, 1989).
- *Murabaha Financing Transactions.* NB may enter into net leases or installment sales of real estate to serve the home finance needs of its customers, who are prohibited by religious principles from paying interest and

therefore from obtaining traditional mortgages. Interpretive Letter No. 806, *reprinted in* [1997-98 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶81,253 (October 17, 1997); Interpretive Letter No. 867 (June 1, 1999).

- *Noncontrolling Investment in Trust to Purchase, Own, Lease Aircraft.* Non-controlling investment in a trust established to purchase, own, and lease commercial aircraft is permissible, however, because of safety and soundness concerns, the bank must charge off the investment in its entirety. Interpretive Letter No. 887 (April 30, 2000).

Lending

- NB and its operating subsidiaries may make, purchase, sell, service or warehouse house loans or other extensions of credit for its own or another's account, including consumer loans, credit card loans, commercial loans, residential mortgage loans, commercial mortgage loans, and standby letters of credit. 12 USC 24(Seventh), 371; 12 CFR 5.34. A NB's broad authority to lend and extend credit includes, but is not limited to, the following activities:
 - *Adjustable Rate Mortgages (ARMs).* NBs may make, sell, purchase, participate in or otherwise deal in ARM loans without regard to state limitations. 12 CFR. 34.2 1 (a).
 - *Advances Necessary to Preserve Business Acquired to Secure DPC.* NBs can make necessary advances to run a business and thereby preserve its going concern value when the business is acquired to secure or collect debt previously contracted ("DPC"). 12 CFR 34.86; Interpretive Letter No. 576, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) 83,346 (March 27, 1992); Interpretive Letter No. 12, *reprinted in* [1978-1979 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,087 (December 7, 1977).
 - *Appraisal Services.* NBs may perform real estate appraisals in connection with both their loans and loans made by other financial institutions. Interpretive Letter No. 467, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,646 (January 24, 1989). NBs may perform appraisals for the occasional customer who requests one even though there is no associated loan transaction. Corporate Decision No. 98-25, 1999 OCC QJ LEXIS 22 (April 1, 1998); 12 CFR 34.45(a). NB operating subsidiaries may perform real estate appraisals for general customers, even if no bank loan is involved, pursuant to the excess capacity theory, provided that the activity constitutes no more than 10 percent of the subsidiary's business.
 - *Balloon Loans.* NBs may make either conventional or repurchase balloon loans secured by personal property and real property. Interpretive Letter

No. 364, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,534 (July 9, 1986). NBs may make fixed rate, balloon, demand or non-regularly amortized residential mortgage loans without regard to state law to the contrary. Interpretive Letter No. 38-01, 1992 WL 486907 (September 30, 1992).

- *Banker's Acceptances* (i.e., commitments by financial institutions to honor drafts of customer at a future date, usually not in excess of nine months). NBs may issue banker's acceptances. NB is not limited in the character of acceptances that it may make in financing credit transactions. Accepting bank may create, buy, and sell acceptances created by any bank in a transaction with any party in any denomination, and a nonaccepting bank may purchase an acceptance of any denomination for resale to any party, including fractional interests, provided that the rights conveyed are at least equivalent to those provided in the underlying documents. 12 CFR. 7.1007.
- *Bridge Loans*. NB's operating subsidiary may form partnerships with the affiliate of an investment bank to make short-term bridge loans and provide advice concerning such bridge loans. Interpretive Letter No. 411, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. 85,635 (January 20, 1988); Interpretive Letter No. 516, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) 83,220 (July 12, 1990).
- *Credit Analysis for Third Parties*. NBs banks may perform credit analysis for third parties. Interpretive Letter (October 11, 1983).
- *Credit Card Banking*. NBs may perform a variety of activities related to credit cards, including issuing credit cards, handling credit applications for other card issuers, operating a card loss notification service, and credit verification services over point of service (POS) terminals. Interpretive Letter (November 14, 1980); Interpretive Letter (January 25, 1979); Interpretive Letter (September 18, 1975); Interpretive Letter (November 14, 1974).
- *Debt Collection*. NBs may collect delinquent loans on behalf of other lenders, may provide billing services for doctors, hospitals, or other service providers and may act as an agent in the warehousing and servicing of other loans. Interpretive Letter (August 27, 1985).
- *Debt for Equity Swaps*. NBs may enter into swaps of rescheduled foreign government loans through a series of interrelated transactions and hold the equity received to extinguish the debt pursuant to the NB's DPC authority. Similarly, NBs may exchange nonperforming or rescheduled debt acquired DPC for equity in unaffiliated companies. Letter from Ralph E. Sharpe, Deputy Comptroller Multinational Banking, dated September 25, 1996; Letter from Ralph E. Sharpe, Deputy Comptroller Multinational Banking,

dated February 25, 1997; Letter from Ralph E. Sharpe, Deputy Comptroller Multinational Banking, dated March 25, 1997; Interpretive Letter No. 643, *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 83,551 (July 1, 1992); Interpretive Letter No. 511, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) (July 20, 1990).

- *Disbursing Agent.* NBs may act as disbursing agent for loans made by another bank. Interpretive Letter (October 18, 1974).
- *Economic Development Loans to Native Americans.* NBs may make loans to certain authorized Native American organizations, with at least 20 percent of the loans guaranteed, without being subject to restrictions of other statutes regarding loan to value ratios, maturity, security, priority of lien or percentage of assets that may be invested. 25 USC 1489.
- *Escrow Services.* NBs may provide escrow services. Interpretive Letter (May 6, 1968).
- *Flood Hazard Determinations.* NBs may provide mortgage lenders with flood hazard determination services. Corporate Decision No. 97-79, (July 11, 1997).
- *Investment in a Firm Engaged in Check Cashing and Payday Lending.* NB may make a non-controlling investment in a firm engaged in check cashing and payday lending activities where the bank would use the firm to educate consumers about traditional banking services, alternatives to payday loans, and the limited proper use of such loans, would cause the firm to provide enhanced disclosures about payday loans, including information about the cost of multiple rollovers, would limit the use of payday loans, such as by imposing annual limits and limits on rollovers, and would assess lower fees for rollover transactions. The firm's check cashing operations also were intended to be used as a vehicle to transition customers into more traditional bank products such as savings accounts. Noncontrolling Investment Notification (March 14, 2000).
- *Lending Limit Exception for Marketable Staples.* The lending limit exception for marketable staples secured by warehouse receipts, 12 U.S.C. § 84(c)(3) and 12 C.F.R. § 32.3(b)(1)(iv)(B), does not apply if the borrower registers the warehouse receipts with an independent third party but retains control of the staples. The borrower was the owner of the elevator in which the staples were stored. Interpretive Letter No. 895 (June 22, 2000).
- *Lending Limit for Loans Guaranteed by the Illinois Farm Development Authority.* Loans guaranteed by the Illinois Farm Development Authority (IFDA) qualify for the lending limit exception contained in 12 C.F.R.

2.3(c)(5) because of an Illinois Attorney General opinion stating that IFDA loan guarantees are backed by the full faith and credit of the State of Illinois. Interpretive Letter No. 889. (May 15, 2000).

- *Loan Origination and Servicing Activities.* NB's operating subsidiary may engage in loan origination and servicing activities, as well as commercial mortgage loan brokerage services. Interpretive Letter No. 387, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,611 (June 22, 1987). NB's operating subsidiary may make, purchase, sell, service or warehouse loans, or other extensions of credit for its own or another's account, including consumer loans, credit card loans, commercial loans, residential mortgage loans, and commercial mortgage loans. 12 CFR 5.34(e)(2)(ii)(L), 34.1 (b).
- *Loan Participations.* NBs may purchase participation interests in pooled loans. Interpretive Letter No. 579, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 183,349 (March 24, 1992).
- *Loan Production Offices.* NBs may establish a loan production office to solicit and originate business outside of its main office and authorized branches. 12 CFR 7.1004, 7.1005; Banking Circular No. 199, *reprinted in* 4 Banking L. Rep. (CCH) ¶ 45-595 (May 23, 1985).
- *Loan Repurchase Agreements.* NBs may agree to repurchase loans or other assets. Interpretive Letter No. 415, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,639 (February 12, 1987); 12 CFR 3 2.2.
- *Loans to an Employee Stock Option Plan (ESOP).* NB, as a disqualified person who serves as trustee or service provider to an ESOP, may make qualified term loans through its commercial loan division to a company sponsoring an ESOP. Trust Interpretation No. 24 1, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) 183,082 (November 14, 1989).
- *Margin Loans.* NB's operating subsidiary may make margin loans. Interpretive Letter No. 326, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,496 (January 17, 1985).
- *Mortgage Document Custodian.* NBs may act as document custodians of residential mortgage loan documents for third parties without obtaining approval to exercise trust powers. 12 USC 24(Seventh).
- *Overdraft Fees Not Interest.* NB's flat fee charges to deposit customers for checks written without sufficient funds on deposit do not constitute "interest" limited by 12 U.S.C. 85. The fee is a processing fee, not

compensation for an extension of credit. *VideoTrax, Inc. v. NationsBank, N.A.*, 33 F.Supp.2d 1041 (S.D. Fla. 1998), aff'd 205 F.3d 1358 (11th Cir. 2000), cert. den. 1212 S. Ct. 66 (October 2, 2000).

- *Purchase of Open Accounts/Factoring.* A NB may purchase open accounts as a part of the business of banking. A NB also may purchase open accounts in connection with export transactions; the accounts should be protected by insurance, such as that provided by the Foreign Credit Insurance Association and the Export-Import Bank. 12 CFR 7.1020.
- *Real Estate Tax and Management Services.* NBs can establish operating subsidiaries to hold an interest in a joint venture engaged in real estate tax reporting and management services in connection with certain loans made by the bank or its lending affiliates. Conditional Approval No. 317 (July 19, 1999).
- *Shared Appreciation Mortgage Loans.* NBs may make shared appreciation mortgage loans to developers for the conversion of residential property into condominium units and receive a fixed amount or percentage of the sales price of each unit sold as a share of the profit, income, and earnings. NBs may also finance the acquisition or improvement of real property on which the borrower will operate its business and receive a percentage of the appreciation of the business's value as interest on the loan. Interpretive Letter No. 244, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) 185,408 (January 26, 1982); 12 CFR 7.1006.
- *Title Abstracting Services.* NB and its subsidiaries, may provide title abstracting services for the parent bank, for unaffiliated lenders, and for the occasional customer who requests the service even if no associated loan transaction exists. 12 USC 24(Seventh); Corporate Decision No. 98-26, 1999 OCC QJ LEXIS 22 (April 21, 1998).
- *Loan Agreements Providing for a Share in Profits, Income, or Earnings or for Stock Warrants.* NBs may make loans and accept from the borrower in lieu of interest, a share of the borrower's profits, equity in the borrower, stock warrants (provided they are not exercised), or stock dividend payments. 12 CFR 7.1006; Interpretive Letter (May 8, 1989).

Other Activities

- *Borrow Money and Pledge Assets.* NBs have authority to borrow money and may pledge assets to secure their borrowings. 12 USC 24(7); Interpretive Letter (August 8, 1965).
- *Certificates of Deposit—Purchase and Sale of Participation.* NB may offer participation interests in certificates of deposit purchased as agent from third-

parties on behalf of a number of the bank's depositors. Interpretive Letter No. 385, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85-609 (June 19, 1987).

- *Coins, Buying and Selling.* NBs may buy and sell privately minted commemorative coins, as an extension of their authority to exchange "coin or bullion." 12 USC 24(Seventh).
- *Commercial Paper Placement.* NBs, as agents, may privately place third-party commercial paper. Securities Industry Assoc. v. Board of Governors of Federal Reserve System, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 483 U.S. 1005 (1987).
- *Consumer Access/Discount Card Program.* NBs may operate a consumer access/discount card program. Interpretive Letter No. 678, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,626 (July 6, 1995).
- *Courier/Messenger Services.* NB may establish and operate a messenger service to transport items relevant to the NB's transactions with its customers, including courier services between financial institutions. 12 CFR 7.1012. However, NBs must receive approval from the OCC to establish a branch if the messenger service constitutes a branching function within the meaning of 12 USC 36(j). NB may use a messenger service established and operated by a third party to pick up from and deliver to its customers items that relate to a branching function without regard to the branching limitations of 12 USC 36. NBs may also provide limited security guard escort service. Interpretive Letter (October 5, 1983).
- *Debt Cancellation and Debt Suspension Agreements.* NBs may offer debt cancellation agreements providing for discharge of and obligation upon the death or disability of a borrower. 12 CFR 7.1013. Similarly, NBs may offer credit card debt suspension agreements providing for suspension of a borrower's repayment obligations in the event of the borrower's disability or unemployment. Interpretive Letter No. 827, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-276 (April 3, 1998).
- *Donation of Fundraising Item.* NB may donate an item for a community fundraising raffle without violating the lottery prohibition of 12 U.S.C. § 25a if the bank was identified as the donor of the item in publicity issued by the raffle sponsors, if the publicity was not displayed on bank premises. Interpretive Letter 900 (June 19, 2000).
- *Internal Bank Financing Operations Offshore.* NB may form an operating subsidiary in the Cayman islands to engage in internal bank financial operations, provided the OCC would have access to all books and records, no

activities we conducted offshore, and the subsidiary would be subject to OCC examination, supervision, and regulation. Conditional Approval No. 413 (September 22, 2000).

- *Postal Services.* NBs may maintain, operate, and receive income from postal substations on banking premises, pursuant to U.S. Postal Service regulations. NBs may advertise, develop, and extend the services of the substation to attract customers. The services performed at the substations must be permitted by the U.S. Postal Service and may include meter stamping of letters and packages, and the sale of related insurance. NBs must keep the books and records of the substations, which are subject to inspection by the U.S. Postal Service, separate from those of other banking operations. 12 CFR 7.1010; 39 CFR 241.2. NBs may sell stamp collecting kits and stamps for collection in accordance with Post Office regulations, but need to be full-fledged postal stations to do this. Interpretive Letter (December 1975).
- *Printing Service.* NB may engage in the printing of checks, drafts, loan payment coupons, and similar documents for use in the NB's business; engage in printing services that facilitate the general operation of the bank as a business enterprise, such as the printing of internal personnel forms; and provide printing services for affiliated banks. 12 USC 24(Seventh); Interpretive Letter No. 811, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,259 (December 18, 1997).
- *Support Services, In General.* NBs may act as agents for an individual or corporation without obtaining prior approval to exercise trust powers if the duties are nondiscretionary and purely ministerial in nature. The following are examples of these services:
 - *Agent for Deposit Placement.* NB may place deposits as agent for its customers with other financial institutions pursuant to 12 USC 24 (Seventh). Investments Securities Letter No. 32, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,038 (December 2, 1988); Interpretive Letter No. 778, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,205 (March 20, 1997) (placing deposits at foreign banks on behalf of customers on an agency basis and offering this service over the internet).
 - *Agent for Purchasing or Selling Government Securities.* NBs may act as agents in the purchase and sale of government securities. 12 CFR 13.
 - *Agent for Purchasing or Selling Real Estate Limited Partnership Interests.* NBs may act as agent in the purchase and sale of financial investment instruments, such as real estate limited partnership interests. Interpretive Letter No. 420, *reprinted in* [1988-1989

Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,644 (March 14, 1988).

- *Agent of Service of Process.* NBs subsidiary may act as agent for service of process on behalf of bank and/or its affiliates as furnishing of services of this nature for a bank or its affiliates is part of or incidental to the business of banking. Corporate Decision No. 97-14, (March 4, 1997).
- *Tax Related Services.* NBs may prepare tax returns directly or through subsidiaries for any type of customer but may act as an expert tax consultant. 12 USC 24(Seventh); 12 CFR 7.1008.
- *Travel Services and Foreign Exchange Activities.* NBs may sell traveler's checks and foreign currency, make travel-related loans, issue letters of credit and provide free travel information. NBs also may assist customers in placing orders for tickets with a travel agency and, in general, lease excess office space to a travel agency. Interpretive Letter No. 437, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,611 (July 27, 1988); Interpretive Letter No. 342, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85, 644 (March 14, 1988).
- *Trucking Company, Credit and Other Services.* NBs may offer credit, fleet management and tracking, inventory control, and accounting services to trucking companies. Interpretive Letter (August 15, 1983).

Payment Services

- *Cash Management.* NBs may provide cash management services. Interpretive Letter No. 756, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) 181-120 (November 5, 1996.)
- *Cash Management Computer Software.* NBs or bank operating subsidiaries may invest in a limited liability company that develops, produces, and distributes or sells cash management software. Interpretive Letter No. 677, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) 183-625 (June 28, 1995); Interpretive Letter No. 756, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) 181-120 (November 5, 1996); Interpretive Letter No. 284, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,448 (March 26, 1984).
- *Cashiers' Checks, Money Orders, Savings Bonds, and Travelers Checks.* NBs may issue, collect, and process cashiers' checks and money orders. NBs may also sell savings bonds and travelers checks. 12 USC 24(Seventh).

- *Check Cashing and Processing.* NBs may cash and process checks, and provide check and credit card verification services. 12 USC 24(Seventh).
- *Check Certification.* NBs may certify checks, provided the person, firm, or corporation drawing the check has sufficient funds on deposit to cover it. 12 USC 501. NBs may guarantee drafts drawn against a bank customer. Interpretive Letter (October 29, 1968).
- *Letters of Credit.* NBs may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law. Under such letters of credit and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the account party and the beneficiary. A NB may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

Fiduciary Activities

- *Fiduciary Activity, In General.* NBs with fiduciary powers (which may be granted at the time of chartering or subsequently on application to the OCC) are subject to federal rules that define fiduciary standards and authorize NBs to operate in the same capacities as fiduciaries are permitted to operate in the states where the bank conducts its trust activities. 12 USC 92a and 12 CFR 9. NBs also may operate as limited purpose trust banks and need not engage in all banking functions. Fiduciary activities include:
 - *Collective Investment Funds (CIFs)/Common Trust Funds.* NBs may invest fiduciary assets in collective investment funds. 12 CFR 9.18. NBs may charge a different management fee to CIF participants, commensurate with the amount and types of services they provide to participants. Interpretive Letter No. 829, *reprinted in* [1997-98 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,278 (April 9, 1998).
 - *Investment of Employees Benefit Account Assets.* NB may invest assets of tax-exempt employee benefit accounts held by the bank in any capacity (including agent), in part 9 collective investment funds, provided the fund itself is exempt from federal taxation. Interpretive letter No. 884 (January 13, 2000).
 - *Nationwide Trust Services.* NBs with fiduciary powers may serve trust customers nationwide, including at trust representatives offices where the bank performs services for trust customers, but does not conduct any core activities that would deem it to be a branch—receive deposits, pay checks, or lend money—without regard to state requirements that restrict entry, offices,

marketing, or otherwise attempt to limit the exercise of lawful NB fiduciary business, including licensing requirements. Interpretive Letter No. 866, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,360; (October 8, 1999); Interpretive Letter No. 872, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,366 (October 28, 1999).

- *Real Estate Brokerage and Related Activities as a Fiduciary.* NB with fiduciary powers may engage in certain real estate brokerage and related activities as a fiduciary (*e.g.*, management of real property as agent or trustee for its customers. Interpretive Letter (September 13, 1984). NBs are not subject to state laws that require this business to be performed in a particular structure.

Insurance and Annuities Activities

Insurance Underwriting and Reinsurance

- *Captive Insurance Company/Underwriting Insurance Coverage on the Operating Risks of the Parent Bank and Its Affiliates.* NB may establish and operating subsidiary to serve as a captive insurance company to underwrite insurance coverages on the operating risks of the parent bank and its affiliates. Corporate Decision 99-03, 1999 OCC QJ LEXIS 97 (June 1999); Interpretive Letter No. 845, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81, 300 (October 20, 1998).
- *Credit Life Insurance.* In addition to acting as agent, NBs may provide credit life and disability insurance to loan customers. NBs may also underwrite credit life, accident, health, disability and involuntary unemployment insurance; mortgage life and disability insurance; and mortgage bond insurance. NBs may reinsure credit life, accident, health, disability and involuntary unemployment insurance; mortgage life, mortgage accidental death, and mortgage disability insurance; and mortgage insurance. 12 USC 24 (Seventh); Conditional Approval No. 334, 1999 OCC QJ LEXIS 75 (October 30, 1999); Corporate Decisions 98-31 (May 26, 1998), 98-28 (May 11, 1998), 97-92 (October 17, 1997), 1998 OCC QJ LEXIS 189 (September 1998); Conditional Approval No. 259 (October 31, 1997).
- *Grandfathered Insurance Products Sales.* NBs and their subsidiaries may continue to underwrite any “insurance” products being provided by NBs as of 1/1/99 or that were authorized in writing by the Comptroller as of that date. 15 USC 6712 (as added by section 302 of GLBA).
- *National Trust Companies/Sale of Insurance.* National trust companies may sell insurance from a trust office located in a place of 5,000 if the office performs core fiduciary functions, including accepting fiduciary appointments, executing trust documents, and making decisions regarding the

investment and distribution of fiduciary assets. Interpretive Letter No. 877, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,371 (December 13, 1999).

- *Place of 5000.* NB may sell insurance directly or through and “operating subsidiary” if the NB is located and doing business in a place of 5,000 or less in population and its agency is also located in that place. 12 USC 92.
- *“Place” for Purposes of “5000 or Less in Population.”* Any area designated by the Census Bureau as a “place” is a “place” for purposes of section 92. Interpretive Letter No. 823, *reprinted in* [1997-98 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,272 (February 27, 1998).
- *Safe Deposit Box Liability Insurance.* NB may underwrite safe deposit box liability insurance for the safe deposit boxes of the bank and its affiliates. Corporate Decision No. 97-92 (October 17, 1997), 1998 OCC QJ LEXIS 189).
- *Sale of Annuities.* NBs may sell annuities without regard to the place of 5,000 restriction in 12 USC 92 on sale of insurance products. NationsBank v. Variable Annuity Life Insurance Co., 513 US 251 (1995).
- *Satellite Offices.* NBs and their subsidiaries with insurance agencies may rely on OCC opinions to establish satellite offices outside the place of 5,000 (including satellite offices in states outside the state where the insurance business is located) to solicit and sell insurance in the same manner generally permissible for state insurance agencies. Interpretive Letter No. 882 (February 22, 2000) (to be published); Interpretive Letter No. 864, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,358 (May 19, 1999); Interpretive Letter No. 873, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,360 (December 1, 1999); Interpretive Letter No. 844, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,367 (October 20, 1998).
- *Scope of Market.* NB generally may sell insurance pursuant to section 92 in the same nationwide market as is generally available to licensed insurance agencies in the state where the bank agency operates. Interpretive Letter No. 753, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,107 (November 4, 1996).
- *Scope of Sales/Domicile of Customers.* NB may sell insurance to customers wherever the customers are located. See NBD Bank, N.A. v. Bennett, 67 F.3d 629 (7th Cir. 1995); Independent Insurance Agent of America, Inc. v. Ludwig, 997 F.2d 958 (D.C. Cir. 1993); Shawmut Bank Connecticut v. Googins, 965 F. Supp. 304 (D. Conn. 1997).

- *Title Insurance—Sales Pursuant to 15 USC 6713 (GLBA section 303).* NBs may sell title insurance as agent in the same manner and to the same extent in a given state as state banks are authorized to sell title insurance in that state. A grandfather provision permits a NB and its subsidiary to continue to conduct title insurance activities that they were actively and lawfully conducting before November 12, 1999.
- *Underwriting Credit-Related insurance post-GLBA.* NB's operating subsidiary may continue underwriting credit-related insurance products in connection with loans made by the bank and affiliated and unaffiliated financial institution lenders under the "authorized product" exception of section 302 of the Gramm-Leach-Bliley Act. Interpretive Letter No. 886 (March 27, 2000).

Reinsurance

- *Mortgage Reinsurance.* NB may reinsure mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates. 12 CFR 5.34, Corporate Decision No. 99-02 (December 11, 1998). A NB's captive mortgage reinsurance subsidiary may enter a mortgage reinsurance agreement with a Cayman Island segregated portfolio company to reinsure private mortgage insurance on loans originated or purchased by the bank or one of its affiliates. Interpretive Letter No. 862, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,356 (June 7, 1999).
- *Mortgage Reinsurance Exchange.* NBs may participate in a mortgage reinsurance exchange where the exchange will provide for the reinsurance of private mortgage insurance on loans originated or purchased by participating lenders. Interpretive Letter No. 828, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,277 (April 6, 1998).
- *Municipal Bond Insurance.* NBs may underwrite municipal bond insurance. Interpretive Letter No. 338, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,508 (May 2, 1985); American Insurance Association v. Clarke, 656 F. Supp. 404 (D.D.C. 1987), *aff'd*, 865 F.2d 278 (D.C. Cir. 1989).
- *Reinsurance (and Underwriting) of Credit Life Insurance, Credit Disability, and/or Involuntary Unemployment Insurance.* NBs may reinsure (and underwrite) credit life insurance, credit disability, credit accident, credit health, and/or involuntary unemployment insurance sold to customers that borrow from the bank and/or its lending affiliates and/or subsidiaries. Corporate Decision Nos. 98-31, (1998), 98-28 (May 11, 1998).
- *Reinsurance of Credit Life and Other Insurance Post-GLBA.* NB may establish an operating subsidiary to reinsure credit life, accident, disability,

and health insurance in connection with loans made by the bank and its affiliates, because the reinsurance of credit-related insurance products satisfies the "authorized product" exception of section 302 of the Gramm-Leach-Bliley Act. Corporate Decision No. 2000-16 (August 29, 2000).

Title Insurance

- *Title Insurance Sales through a Financial Subsidiary.* Financial subsidiary of a NB may offer title insurance in the State of New Jersey, even though New Jersey law generally prohibits banks from selling title insurance. Corporate Decision No. 2000-14 (August 16, 2000).
- Unless a state law in effect before November 12, 1999 prohibits all persons in a state from selling or underwriting title insurance--
 - *Grandfathered Title Insurance Activities.* A NB and its subsidiaries may continue to conduct title insurance activities, including underwriting, in which the NB or subsidiary were lawfully engaged before November 12, 1999, subject to some exceptions if affiliates are providing insurance as principal. 15 USC 6713 (as added by section 303 of GLBA).
 - *Sales as Agent.* NBs and their subsidiaries may sell title insurance as agents in a state to the same extent as permitted for state banks. 15 USC 6713 (as added by section 303 of GLBA).
 - *State Parity for Title Insurance Sales through an Operating Subsidiary.* NB's operating subsidiary could sell title insurance in Pennsylvania, without being subject to the place of 5000 requirement, because state law permits title insurance sales without geographic limitations. Conditional Approval No. 371 (March 20, 2000).

Preemption: (Opinions January 1992 through June 11, 1998)

- *In General.* Federal preemption of state law restrictions applies to activities of NBs whether conducted at branches or nonbranch facilities (loan production offices (LPOs), deposit production offices (DPOs), automated teller machines (ATMs), remote service units (RSUs)) or through operations over the internet.
- *Auction of Certificates of Deposit Over the Internet.* Pennsylvania laws that purport to regulate the auction of certificates of deposit over the Internet, by requiring auctioneers to be licensed by the Pennsylvania Board of Auctioneer Examiners, pay a licensing fee, and keep records of sales of property at auction, are preempted because they conflict with federal law authorizing NBs to conduct the permissible activities of deposit-taking and marketing and OCC regulations authorizing NBs to use the Internet to do so. The state laws at issue also would violate the OCC's exclusive

visitorial powers over NBs. Preemption determination (March 7, 2000). *Federal Register*, 65 Fed. Reg. 15037 (March 20, 2000).

- *Affiliation*. States generally may not prevent or restrict NBs or their affiliates from affiliating with any entity, including a securities or insurance firm, as authorized by GLBA or any other federal law. 15 USC 6701 (as added by section 104 of GLBA).
- *Annual Reports, Fees for Extension of Consumer Credit: Idaho*. Provisions of Idaho Consumer Credit Code Requiring annual reports and payment of fees as a condition to being permitted to extend consumer credit are preempted by federal law. Interpretive Letter (May 6, 1993).
- *Annuities: Connecticut*. A Connecticut statute that requires all sellers of variable annuities to be licensed by the State is preempted. Interpretive Letter No. 623, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,512 (May 10, 1993).
- *Annuities: Florida*. The anti-affiliation provisions of the Florida Insurance Code, and provisions requiring NBs to give notice and obtain authorization to engage in the sale of annuities, as well as implementing regulations, conflict with the authority of NBs to sell annuities as agent and are therefore preempted. Interpretive Letter (July 13, 1993).
- *Annuities: Texas*. Texas insurance licensing laws that prevent or significantly interfere with a NB's authority to sell annuities as agent are preempted, but other state laws are not preempted; applicable federal securities laws apply to the sale of these products. Interpretive Letter No. 749, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,114 (September 13, 1996).
- *ATM Fees*. Local laws in California purporting to bar NBs from "surcharging" ATM users who are not bank account holders are preempted by the National Bank Act, which authorizes NBs to provide ATM services and to charge for the services they provide. *Bank of America, N.A., et al. V. City and County of San Francisco, CA, et al.*, 215 F 3d 1132 (9th Cir., March 31, 2000), aff'g CC-99-4817-VRW (N.D. Ca. November 11, 1999).
- *ATM Restrictions: Colorado*. Portions of the Colorado Electronic Funds Transfer Act prohibiting NBs from placing their names on ATMs and giving the state regulatory authority over NB ATMs are preempted. Interpretive Letter No. 789, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,216 (June 27, 1997).
- *Checking Accounts: New Jersey*. The New Jersey Consumer Checking Act is preempted. Interpretive Letter No. 572, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,342 (January 15, 1992).

- *Consumer Credit, Examination Fees: Idaho.* Provisions of the Idaho Consumer Credit Code that impose licensing requirements as a condition to extending consumer credit, recordkeeping and reporting requirements, and assessments of fees to defray
- the costs of supervision and examination are preempted. Interpretive Letter (February 9, 1995).
- *Credit Cards Finance Charges: Massachusetts.* A Massachusetts law that requires the reporting of credit card finance charges and fees to the state is preempted. Interpretive Letter No. 616, reprinted in [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,456 (February 26, 1993).
- *Credit Card Operations, Licensing, Visitation, and Fees: Iowa.* Provisions of the Iowa Lender Credit Card Act regarding state licensing, supervision, and permissible rates and fees for credit card lenders are preempted for NBs. Interpretive Letter (February 4, 1992).
- *Debt Cancellation Contracts: Texas.* A Texas administrative interpretation that the Texas Credit Code prohibits NBs from offering debt cancellation contracts is preempted. Interpretive Letter (November 2, 1992).
- *Exportation of rates.* NBs located in more than one state may export interest rates (including any fees in connection with credit extension or availability) from one state to customers in another state. This “most-favored-lender” status allows NB to export these rates from its main office state to customers in any state with no restrictions, and from a branch office state if certain conditions are met. 12 USC 85; 12 CFR 7.4001; Smiley v. Citibank, 517 US 735 (1996); Interpretive Letter No. 803, reprinted in [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,250 (October 7, 1997); Interpretive Letter No. 782, reprinted in [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,209 (May 21, 1997).
- *Fees and Charges.* NBs may establish noninterest charges and fees, including deposit account service charges and fees for other banking services, notwithstanding efforts by states or municipalities to restrict or limit NBs’ fees and charges. 12 CFR 7.4002; Bank of America, N.A. v. San Francisco, No. C 99 4817 VRW (N.D. Ca.) (preliminary injunction granted Nov. 15, 1999).
- *Federal Branches: Illinois.* Illinois restrictions on the establishment of Federal branches do not limit the authority of the Comptroller to license federal branches of foreign banks in Illinois. Interpretive Letter No. 590, reprinted in [1992-1993 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,415 (June 18, 1992).
- *Insurance.* As a general rule, states may not prevent or restrict NBs or their affiliates from engaging in any activities authorized or permitted under GLBA. Specifically in the area of insurance sales, solicitations, or cross-marketing activities, any state laws outside 13 specific safe harbors may be struck down, if they are not consistent with

the traditional preemption principles set forth by the U.S. Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson 517 U.S. 25 (1996). 15 USC 6701 (as added by section 104 of GLBA); Valley National Bank v. Lavecchia, 59 F. Supp. 2d 432 (D. N.J. 1999); New York Bankers Association, Inc. v. Levin, 999 F. Supp. 716 (W.D. N.Y. 1998); Texas Bankers Association v. Bomer, 1997 U.S. Dist. LEXIS 13422 (W.D. Tex. Aug. 7, 1997).

- *Loan Production Offices: Texas.* A Texas regulation requiring licensing of loan production offices as a condition for operation, and regulating the types of activities that can be conducted at such offices, is preempted. Interpretive Letter (May 15, 1995).
- *Mortgage Loan Restrictions: Pennsylvania.* Residential mortgage loan terms prescribed by the Pennsylvania Banking Code do not apply to NBs (applying former 12 CFR 34.2), and Pennsylvania state-chartered banks can choose to follow OCC regulations instead of state law (applying 12 USC 3803). Interpretive Letter (September 30, 1992).
- *Naming and Advertising of Branch Facilities: Texas.* A Texas regulation concerning the "naming and advertising of branch facilities" is not preempted for NBs. Interpretive Letter No. 674, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,622 (June 9, 1995).
- *National, Nonbranch Operations.* NBs may establish nationwide loan production offices (LPOs), deposit production offices (DPOs), ATMs, remote service units (RSUs), and other nonbranch facilities, notwithstanding any state laws that attempt to regulate the location or operation of, or to impose licensing requirements on, those facilities. ATMs are excluded from the definition of a branch by statute. 12 USC 36(j), 1813(o). LPOs, DPOs, RSUs, and other nonbranch offices do not constitute branches under OCC interpretations and/or court decisions. Bank One, Utah v. Guttau, 190 F.3d 844 (8th Cir. 1999); 12 CFR 7.4003-.4005.
- *Out-of-State Banks (Restrictions on Interstate Mergers, Transacting Business): Texas.* A Texas statute that purports to prohibit interstate mergers under the Riegle-Neal Act is preempted as to a merger authorized under other federal law (*e.g.*, merger of an out-of-state NB with branches in Texas and an in-state NB pursuant to 12 USC 215a). In addition, a Texas constitutional provision that appears to prohibit out-of-state NBs from conducting business in Texas and a statute that prohibits out-of-state NBs from conducting fiduciary activities in Texas are preempted. Corporate Decision 98-19 (April 2, 1998).
- *Out-of-State Banks (Restrictions on Fiduciary Activities): Missouri.* Missouri statutes that prohibit an out-of-state NB from exercising fiduciary powers in Missouri are preempted. Corporate Decision 98-16, 99 OCC QJ LEXIS 22 (March 4, 1998).

- *Out-of-State Banks (Restrictions on Branching): Texas.* Texas statutes that purport to prohibit an out-of-state NB from having branches in Texas acquired pursuant to federal law are preempted. Corporate Decision 98-07, 99 OCC QJ LEXIS 22 (January 15, 1998).
- *Out-of-State Banks (Restrictions on Fiduciary Activity): Wisconsin.* A Wisconsin statute that prohibits an out-of-state NB from acting as fiduciary is preempted. Corporate Decision 97-33, 98 OCC QJ LEXIS 6 (June 1, 1997).
- *Out-of-State Banks (Restrictions on Transacting Business, Branching): Connecticut.* Connecticut statutes prohibiting out-of-state NBs from transacting business in Connecticut, unless permitted under state law, requiring state approval for the merger of an out-of-state NB with a Connecticut bank, and requiring state approval for branching in Connecticut by an out-of-state NB, as permitted by federal law, are preempted. Corporate Decision 96-17 (March 27, 1996).
- *Out-of-State Banks (Restrictions on Transacting Business): West Virginia.* A West Virginia statute prohibiting out-of-state NBs from transacting business in West Virginia is preempted. Corporate Decision 96-06 (January 29, 1996).
- *Out-of-State Banks (Restrictions on Branching): Idaho.* An Idaho statute prohibiting out-of-state NBs from branching in Idaho, as permitted by federal law, is preempted. Corporate Decision 95-59 (November 20, 1995).
- *Out-of-State Banks (Restrictions on Transacting Business, Branching): West Virginia, Ohio).* A West Virginia statute prohibiting out-of-state NBs from transacting business in West Virginia is preempted and an Ohio law prohibiting
- Out-of-state NBs from branching in Ohio, as permitted by Federal law, is preempted. Corporate Decision 95-50 (October 5, 1995).
- *Out-of-State Banks (Restrictions on Transacting Business): West Virginia.* A West Virginia statute prohibiting out-of-state NBs from transacting business in West Virginia is preempted. Corporate Decision 95-46 (September 11, 1995).
- *Out-of-State Banks (Restrictions on Transacting Business, Mergers, and Branching): Connecticut.* Connecticut statutes prohibiting out-of-state NBs from transacting business in Connecticut, unless permitted under state law, requiring state approval for the merger of an out-of-state NB with a Connecticut bank, and requiring state approval for branching in Connecticut by an out-of-state NB, as permitted by federal law, are preempted. Corporate Decision 95-34 (July 26, 1995).
- *Out-of-State Banks (Restrictions on Transacting Business): West Virginia.* A West Virginia statute prohibiting out-of-state NBs from transacting business in West Virginia is preempted. Corporate Decision 95-24 (June 9, 1995).

- *Out-of-State Banks (Restrictions on Relocation): Kansas.* A Kansas statute prohibiting out-of-state NBs owned by bank holding companies from relocating into Kansas, as permitted by federal law, is preempted. Corporate Decision 95-28 (April 4, 1995).
- *Out-of-State Banks (Restrictions on Transacting Business): Kentucky.* A Kentucky statute prohibiting out-of-state NBs from transacting business in Kentucky is preempted. Corporate Decision 95-13 (March 14, 1995).
- *Out-of-State Banks (Restrictions on Branching): Maryland.* A Maryland statute prohibiting out-of-state NBs from branching in Maryland, as permitted by Federal law, is preempted. Corporate Decision 95-10 (March 8, 1995).
- *Out-of-State Banks (Restrictions on Branching): Kansas.* A Kansas statute prohibiting out-of-state NBs from branching in Kansas, as permitted by Federal law, is preempted. Corporate Decision 95-05, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 90,474 (February 16, 1995).
- *Real Estate Loans; ARMs.* NBs may make real estate loans under 12 USC 371 and 12 CFR 34.3 without regard to state law limitations concerning: (a) the amount of a loan in relation to the appraised value of the real estate, (b) the loan repayment schedule, (c) the term to maturity of the loan, (d) the amount of funds that may be loaned upon the security of the real estate, and (e) the covenants and restrictions that are required to qualify the leasehold as acceptable security for a real estate loan (12 CFR 34.4). In addition, NBs and their subsidiaries may make, sell, purchase, participate in, or otherwise deal in ARM loans and interests therein without regard to any state law limitations on those activities. 12 CFR 34.21.
- *Registrations, Fee Requirements, Mortgage Broker or Lender: Georgia.* Provisions of the Georgia Residential Mortgage Act that impose registration and fee requirements as a condition to transacting business directly or indirectly as mortgage brokers or mortgage lenders are preempted. Interpretive Letter No. 644, *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,593 (March 24, 1994).
- *Registrations, Investment Advisor: Texas.* A Texas statute that requires a NB to register with the state as an investment adviser before providing investment advisory services to its trust customers is preempted. Interpretive Letter No. 628, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,511 (July 19, 1993).
- *Sunday Operation: Alabama.* Alabama law prohibiting Sunday operations is preempted. Interpretive Letter No. 706, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,021 (January 18, 1996).
- *Trust operations.* State laws that prohibit or restrict NBss from soliciting, conducting, or operating a trust business through nonbranch trust offices are preempted. This enables NBss to conduct a nationwide trust business notwithstanding

branching requirements or state law prohibitions, restrictions, or licensing requirements in states in which the activities are being conducted through nonbranch offices. 12 USC 92a; Interpretive Letter Nos. 872, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,366 (October 28, 1999), 866, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,360 (October 8, 1999).

- *Usury: Arkansas.* A usury provision in the Arkansas constitution applies to NBs in the same manner as it applies to state banks, and therefore is not preempted. Letter (June 10, 1992).
- *Visitation, Generally.* In general, only the OCC may exercise visitorial powers with respect to a NB, such as conducting examinations, inspecting or requiring the production of books or records, or prosecuting enforcement actions. For that reason, except in the limited circumstances in which federal law grants express special authority to a state or other federal official, NBs have only one regulator, the OCC. 12 CFR 7.4000; National State Bank, Elizabeth, New Jersey v. Long, 630 F.2d 981 (3d Cir. 1980); First Union National Bank v. Burke, 48 F. Supp. 2d 132 (D. Conn. 1999). The following are examples of preemption in connection with visitation:
 - *Visitation, Insurance Agency: New York.* New York law permitting State inspection of books and records of a NB's insurance agency to determine compliance with applicable state law is not preempted. Letter (July 7, 1997).
 - *Visitation, Licensing, Brokerage: Iowa.* Provisions of the Iowa Uniform Securities Act requiring NBs performing discount brokerage activities to register with the state, and providing for state examination, are preempted. Letter (December 7, 1992).
 - *Visitation, Licensing, Credit Card Operations: Idaho, Wisconsin, and Wyoming.* Portions of the Idaho Credit Code (requiring credit card issuers, including NBs, to obtain licenses to issue credit cards to Idaho residents, and to be subject to visitation or enforcement by state officials), the Wisconsin Consumer Act (requiring NBs making certain consumer credit transactions to comply with notification requirements and to submit to visitation and enforcement by state officials), and the Wyoming Uniform Consumer Credit Code (containing similar visitation and enforcement provisions) are preempted. Interpretive Letter No. 614 (January 15, 1993).
 - *Visitation, Registration, Securities Brokerage: Nebraska.* Portions of the Nebraska Securities Act requiring NBs performing securities brokerage activities to register, and providing for state examination, are preempted. Interpretive Letter (February 1, 1993).
 - *Visitation, Subpoena: Texas.* A subpoena issued by the Texas House of Representatives seeking NB books and records represents an attempted

exercise of visitatorial powers by state authorities and is therefore preempted. Interpretive Letter (June 3, 1993).

Securities Activities

- *Asset Securitization.* NBs may purchase and sell, as principal or agent, asset-backed obligations. 12 CFR 1.2(l), (m). NBs may securitize and sell assets they hold, including mortgage and nonmortgage loans that are originated by the bank or purchased from others. NBs may buy and sell as principal asset backed obligations. 12 CFR 1.3(g).
- *Broker-Dealer Activities.* NBs directly, and without registering with the SEC, may engage in many types of securities broker-dealer activities, including transactions for trust customers, private placements, issuance and sales of certain asset-backed securities, transactions for certain stock purchase plans, and transactions in "identified banking products" (including generally deposit instruments, banker's acceptances, loan participations (subject to certain sales restrictions), and derivatives). 15 USC 78c(a)(4), (5) (as amended by sections 201 and 202 of GLBA).
- *Clearing and Execution Services.* NBs may execute and clear securities transactions. Interpretive Letter No. 494, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,038 (December 20, 1989).
- *Closed End Mutual Funds.* NBs may organize a closed end investment company (which does not continuously offer, shares for purchase). OCC Conditional Approval No. 164 (Dec. 9, 1994).
- *Derivatives Activities.* NBs may offer investment advice and engage in a variety of derivative activities (including swaps, futures, forwards, and options) as a financial intermediary or to manage or reduce risks.
- *Derivatives Generally.* NBs and their operating subsidiaries may advise, structure, arrange, and execute transactions, as agent or principal, in connection with interest rate, basis rate, currency, currency coupon, and cash-settled commodity, commodity price index, equity and equity index swaps, and other related derivative products, such as caps, collars, floors, swaptions, forward rate agreements, and other similar products commonly known as derivatives. NBs may originate, trade, and make markets in these products. NBs may arrange matched swaps or enter into unmatched swaps on an individual or portfolio basis and may offset unmatched positions with exchange traded futures and options contracts or over-the-counter cash-settled options. NBs may provide financial advice and counseling for these activities as permissible incidental activities under 12 USC 24(Seventh). Interpretive Letter No. 725, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,040 (May, 10, 1996).

- *Equity Derivative Transactions.* NBs may engage in equity derivative transactions. NBs may offer time deposit accounts, certificates of deposit, or contracts that pay interest at a rate based on the gain in designated equity indices, including the S&P 500 Index. NBs may engage in swap activities tied to equities and equity indices. A bank may take positions in equities to hedge bank permissible equity derivatives originated by customers for their independent and valid business purposes, if the bank: (1) provides the OCC information about its derivative business and proposed hedging activities, including their effectiveness and efficiency in reducing risks, (2) establishes that the bank has an appropriate risk management process in place, and (3) obtains supervisory approval from the OCC. *Decision of the Office of the Comptroller of the Currency on the Request by Chase Manhattan Bank, N.A. to Offer the Chase Market Index Investment Deposit Account* (1988); *Investment Company Institute v. Ludwig*, 884 F. Supp. 4 (D.D.C. 1995); Letter from Ellen Broadman, Director, Securities and Corporate Practices Division, OCC, to Barbara Monheit, Regional Counsel, FDIC (October 29, 1998); Interpretive Letter No. 652 (September 13, 1994), *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,600; Interpretive Letter No. 892 (September 13, 2000), *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-4.11.
- *Hedging Credit Risk.* NBs may enter into credit derivative transactions. A NB may use debt securities that are not investment grade debt securities or the credit equivalents thereof, to hedge bank permissible derivative, including credit derivative, transactions. Banking Bulletin 96-43 (August 12, 1996); Memorandum from Donald N. Lamson, Assistant Director, and Tena M. Alexander, Senior Attorney, Securities and Corporate Practices Division, dated July 26, 2000. A NB may purchase cash-settled options on futures contracts on bank impermissible commodities to hedge the credit risk in its agricultural loan portfolio. Before a NB may engage in the activity, the OCC must affirm that the bank has an effective risk management process in place. An effective risk management process includes Board supervision, managerial and staff expertise, comprehensive policies and operating procedures, risk identification, measurement and management information systems, as well as effective risk control functions that oversee and ensure the continuing appropriateness of the risk management process. Letter from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, dated August 21, 2000.
- *Holding Securities to Hedge Equity Derivatives Transactions.* Subject to supervisory clearance, national banks may take positions in equity securities solely to hedge bank permissible equity derivative transactions originated by customers for their independent business purposes, subject to certain qualifications and quantitative limits. The bank may not hold the securities for speculative purposes. Interpretive Letter No. 982 (September 8, 2000).
- *Investment Advisory Activities with Limited Interest in Advised Funds.* NB may acquire a non-controlling investment in a SEC registered investment advisory company when the investment advisory company owns limited equity interests in investment funds to which it provides investment advisory and related services if the

limited interests are necessary for the company to engage in bank permissible investment advisory activities due to investor demands, industry practices, and competitive factors. Interpretive Letter No. 897 (October 23, 2000).

- *Investment Vehicle for Bank Clients.* NB's operating subsidiary, a limited liability company (LLC), may serve as a sole general partner of a limited partnership that is used as an investment vehicle for bank clients. Corporate Decision No. 2000-07 (May 10, 2000).
- *Lobby Leasing and Employee Sharing Arrangements.* NBs may engage in various lobby leasing and employee sharing arrangements that provide full service brokerage and investment advice to customers through use of third-party providers. 12 CFR 7.3001; Interpretive Letter (June 4, 1985); Interpretive Letter No. 407, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,631 (August 4, 1987). 15 USC 78(c)(a)(4)(B)(i) (as amended by section 201 of GLBA).
- *Municipal Securities.* NBs may underwrite, deal in, and act as agent in the purchase and sale of general obligation bonds. They may also underwrite, deal in, and act as agent in the purchase and sale of revenue bonds if they are well capitalized. 12 USC 24(7th).
- *Mutual Fund Activities.* NBs and their operating subsidiaries may offer a broad range of administrative and investment advisory services, serve as custodian and transfer agent, and broker investment company shares. Interpretive Letter No. 648, *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,557 (May 4, 1994).
- *Networking Arrangements.* NBs may enter into networking arrangements, whereby securities brokerage services are made available to bank customers by a broker dealer using leased space on bank premises. Interpretive Letters Nos. 406-408, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) 55,630 to 85,632 (August 4, 1987).
- *On-line Securities Trading.* NB may acquire an indirect non-controlling interest in an entity that will provide online securities trading and related services. In general, the bank should indicate that it does not provide, endorse, or guarantee any of the products or services available through the third party web pages. For links to pages that provide nondeposit investment products, the disclosures also should alert customers to risks associated with these products, for example, by stating that the products are not insured by the FDIC, are not a deposit, and may lose value. Banks also have responsibility for the appropriate placement of disclosures via electronic means on their web page(s). Interpretive Letter No. 889 (April 24, 2000).
- *Options on Futures Contracts.* NB may purchase options on futures contracts on commodities to hedge the credit risk in its agricultural loan portfolio. Interpretive Letter No. 896 (August 21, 2000).

- *Parent Bank's Investment Securities Portfolio.* A NB operating subsidiary may own, hold, and manage all or part of the parent bank's investment securities portfolio. 12 CFR 5.34(ii)(N).
- *Performance-linked Compensation.* NBs may offer products and services and may accept as sole or partial compensation a share of the customer's profit, income, or earnings. Such performance-linked compensation can be in the form of stock warrants or contractual arrangements between the bank and its customer, whereby a share of the customer's profits, income, or earnings would be paid to the bank. 12 CFR 7.1006; Corporate Decision No. 2000-02 (February 25, 2000).
- *Private Placement of Securities.* NBs may privately place securities. Securities Industry Association v. Board of Governors, Federal Reserve, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 483 U.S. 1005 (1987) ("Bankers Trust II").
- *Private Placement Services.* NB's operating subsidiary may assist customers in the issuance of debt and equity securities by providing private placement services as agent, and financial and transactional advice to customers in structuring, arranging and executing various financial transactions, as agent, in connection with its private placement activities. While performance-linked compensation, including warrants, may be accepted as the compensation for such services, neither the bank nor the subsidiary may exercise any warrants. Corporate Decision No. 2000-02 (February 25, 2000).
- *Repurchase Obligations.* NBs may purchase securities subject to repurchase agreements. Interpretive Letter No. 629, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,512 (July 2, 1993).
- *Riskless Principal.* NBs may act as riskless principal in securities transactions. Interpretive Letter No. 626, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 83, 508 (July 7, 1993).
- *Securities Brokerage.* NBs may provide full service securities brokerage (investment advisory services and brokerage services) or act as a futures commission merchant, and provide credit and other related services. 12 USC 24(Seventh).
- *Securities Brokerage in Primary Markets.* NB's broker-dealer subsidiary may act as a broker for securities underwritten by a section 20 affiliate. A federal branch may act as a broker for 144A securities initially purchased by its foreign parent. Interpretive Letter No. 876 (December 8, 1999), *reprinted in* [1999-2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 881-370; Letter from Julie L. Williams, Chief Counsel, dated January 26, 1999; Letter from Julie L. Williams, Chief Counsel, dated February 25, 1998.
- *Securities Exchanges.* NB's operating subsidiary may join domestic exchanges and clearinghouses, provided that the bank and its subsidiaries do not guarantee or

otherwise become liable for trades executed and/or cleared, the NB does not guarantee or assume liability for the operating subsidiary, and the NB complies with certain conditions. Interpretive Letter Nos. 624, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,506 (June 30, 1993); 629, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,512 (July 2, 1993); 494, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 58,707 (December 20, 1990); 293, *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 58,707 (May 21, 1986).

- *Securities Lending.* NBs may lend securities from their own investment or trading accounts or from safekeeping, trust, or pension accounts of their customers. Banking Circular No. 196 (May 7, 1985).
- *Sweeps.* NBs may sweep funds from a corporate demand deposit account to a proprietary money market account. Interpretive Letter Nos. 760, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,124 (November 14, 1996), 688, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,003 (May 31, 1995).
- *Transfer Agent.* NBs may act as a transfer or fiscal agent and may guarantee the signature of an endorser or transferor of securities. 15 USC 78q-1, 12 CFR 9.20; Interpretive Letter (December 5, 1985).
- *Underwriting and Dealing.* NBs directly, and through operating subsidiaries, may underwrite, deal in, and act as agent in the purchase and sale of various types of securities, including U.S. government securities, municipal general obligation and revenue bonds, and asset-backed securities. 12 USC 24(Seventh); 12 CFR 12; 12 CFR 1.

Technology and Electronic Activities

Digital Certification

- *Digital Certification.* NB may act as a certification authority to enable subscribers to generate digital signatures that verify the identity of a sender of an electronic message. Conditional Approval No. 267, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,256 (January 12, 1998).
- *Multiple Bank Certification Authority Network System.* NBs may invest in a multibank venture to establish an entity that will support a multiple bank certification authority network system. The central entity will act as the root CA for the sub-CA banks and will establish business rules, so that customers of any sub-CAs can quickly and easily obtain verification of a certificate issued by any other CA bank in the system. Conditional Approval No. 339 (November 16, 1999).

Electronic Bill Payments

Dispensing Prepaid Alternate Media from ATMs

- *Dispensing Prepaid Alternate Media.* NBs may dispense "alternate media" supplied by merchants, *i.e.*, public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising materials, EBT script, and credit and debit cards, from ATM machines. Interpretive Letter No. 718, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,033 (March 14, 1996).

Electronic Bill Presentment

- *Electronic Bill Payment and Presentment Services through the Internet.* NBs may have a minority investment in limited liability companies that offer electronic bill payment and presentment services through the Internet. Conditional Approval No. 304 (March 5, 1999).
- *Electronic Bill Payment.* NBs may invest in an Internet electronic payment system as a complement to existing Internet bill presentment services. The system would also permit customers to make payments not linked to a presented bill. Conditional Approval No. 389, (May 19, 2000).
- *Electronic Interbank Switch.* NBs may invest in an electronic interbank switch to support electronic bill presentment services over the Internet. Conditional Approval No. 332 (October 18, 1999).

Electronic Data Interchange (EDI) Services

- *Minority Interest in EDI Services.* NBs may acquire and hold a minority interest in companies that offer EDI services that allow businesses to send and receive payments, invoices, and orders worldwide. Interpretive Letter No. 732, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,049 (May 10, 1996).

Electronic Toll Collection

- *Operation of an Electronic Toll Collection System.* NBs may enter a contract with a public authority to operate, on behalf of the public authority, an electronic toll collection system, because the activities involved are part of the business of banking (the collection and remittance of funds and payments) and thus permissible under 12 USC 24(Seventh). Interpretive Letter No. 731, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,048 (July 1, 1996).

Merchant Processing of Credit Cards Via Internet

- *Access to Third-Party Vendors of Services for the Merchant Processing Industry.* NBs may provide, via Internet links, their merchant-processing customers with information and access to third-party vendors of services for the merchant processing industry. Corporate Decision No. 99-35 (October 20, 1999).
- *Electronic Transmission of Sales Information Relating to Merchant Processing.* NBs may permit its merchant customers to transmit their sales information over the Internet rather than physically submitting paper sales drafts or electronically transmitting their sales information by a dial terminal. Interpretive Letter (June 27, 1996).

Stored Value

- *Closed Stored Value Card (SVC) Systems.* NBs may invest in LLC that will design, install, and support closed SVC systems at universities and other institutions. Interpretive Letter No. 737, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 8 1,101 (August 19, 1996).
- *Creation, Sale, and Redemption of Stored Value Cards.* NBs may acquire membership interests in LLCs that operate an "open" stored value card system. This is permissible because the creation, sale, and redemption of electronic stored value in exchange for dollars is part of the business of banking. Interpretive Letter (December 2, 1996); Interpretive Letter No. 855, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,312 (March 1, 1999).

Electronic Commerce

- *Commercial Web Site Hosting Services.* NBs can host commercially enabled web sites for small retailers. This service will enable a retailer to operate a web site that can receive and process credit card orders for its merchandise over the Internet. Interpretive Letter No. 856, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) 181, 313 (March 5, 1999).
- *Electronic Marketplace for NonFinancial Products over the Internet.* NBs may operate a web site providing consumers and dealers with detailed information on used cars for sale that meet purchaser preferences. Site may also conduct electronic auctions for dealers. In connection with resulting sales and referrals, the bank will also offer a range of financial products related to vehicle purchases, such as loan and lease arrangements. Corporate Decision No. 97-60 (July 1, 1997).

- *Electronic Storage.* NB may provide electronic storage and retrieval for external customers (i.e., nonbanking customers). Interpretive Letter No. 888 (March 14, 2000).
- *Facilitation of Electronic Commerce Among "Member" Businesses.* NB operating subsidiary may support and facilitate electronic commerce by and among a group of "member" businesses by using the Internet to assist member businesses: in transacting business with each other; to refer members to third party vendors that make products and services available at preferred rates; to enable members to exchange information with each other concerning possible joint activities; to host or support Web sites for members to facilitate their distribution of products and services; to develop and deploy a Web-based payment system for members; and, to deploy systems to track and store financial and transactional information. Incidental to those functions, the Internet site may also provide access to a limited amount of non-financial information that is necessary to attract persons to a virtual small site. Conditional Approval No. 369 (February 25, 2000).
- *Hyperlinks Between Bank Web Sites and Third-Party Sites.* NBs, in the exercise of their finder authority, may establish hyperlinks between their home pages and the Internet pages of third-party providers so that bank customers will be able to access those nonbank web sites from the bank site. Conditional Approval No. 221 (December 3, 1996); Conditional Approval No. 347 (January 29, 2000) (NBs, under their finder authority, can obtain commitments in web linking agreements with third parties to provide preferential pricing or other terms to bank customers referred to the third party through the bank site).
- *Services to Internet Merchants.* NB's operating subsidiary may provide services to merchants that facilitate the sales of goods and services over the Internet. The company will offer a package of Internet services that bundle payments processing with the support necessary for merchants to have their web sites linked to a "virtual mall" web site. The company will also offer these services to other financial institutions on a wholesale basis for their respective customers. Corporate Decision No. 2000-08 (June 1, 2000).
- *Virtual Malls.* NBs may operate a "virtual mall," i.e., a bank-hosted set of web pages with a collection of links to third-party web sites organized by product type and available to bank customers, so that they can shop for a range of financial and non-financial products and services via links to sites of third-party vendors and merchants can electronically confirm payment authorization before shipping goods. Interpretive Letter No. 875, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,369 (October 31, 1999).

- *Web Design and Development Services.* NBs, incidental to offering commercially engaged web site hosting, may provide web design and development services to their merchant customers. Interpretive Letter No. 875 (October 31, 1999).

Electronic Correspondent Services

- *Electronic Correspondent Services.* NB's operating subsidiary may sell computer network services and related hardware to other financial institutions as a correspondent banking service and, thus, part of the business of banking. A subsidiary's sale of full function hardware as part of a package of network services is "incidental" to those correspondent services. Interpretive Letter No. 754, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) 81,118 (November 6, 1996).

Internet Access Service

- *Internet Access Service.* NB's operating subsidiary may acquire and hold a minority interest in a limited liability company that supplies a network for home banking systems. Conditional Approval Letter No. 221 (December 4, 1996).
- *Provision of Internet Access to Bank Customers.* NB operating subsidiary may provide Internet access to customers in its service area, as an incidental activity to the bank's provision of Internet banking services. Conditional Approval No. 409 (August 10, 2000).
- *Internet Access and Sale of Excess Capacity.* NBs may provide full Internet access service in connection with their Internet banking services and, incidental to that, may sell good faith excess capacity in access service to persons who are not Internet banking customers. Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,106 (August 19, 1996).

Internet and PC Banking

- *Computer Software.* NBs or bank operating subsidiaries may invest in a limited liability company that develops, produces, and distributes or sells cash management software. Interpretive Letter No. 677, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83-625 (June 28, 1995); Interpretive Letter No. 756, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-120 (November 5, 1996); Interpretive Letter No. 284, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85, 448 (March 26, 1984).

- *Internet Banking Powers.* NBs can offer Internet banking services and, in connection with those activities, provide full Internet access service. Interpretive Letter No. 742, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,106 (August 19, 1996).
- *Internet Banks.* NBs can deliver products and services to customers primarily through electronic means through a limited-purpose bank. Such banks can operate without any traditional banking offices. In addition to using the mail, customers can conduct their banking transactions by personal computer or by telephoning the automated voice response system or customer service line. Conditional Approval No. 253 (August 20, 1997).
- *Internet Credit Card Banks.* NBs can operate limited-purpose Internet credit card banks. Key features of one such bank include an entirely online credit application and approval process and an Internet direct marketing approach. Conditional Approval No. 312 (May 8, 1999).
- *Internet Full Service Banks.* NBs may be full service Internet banks. Internet-based NB will not have any traditional banking offices, but will deliver products and services through a variety of electronic delivery channels. Customers will conduct transactions through ATMs, Internet via a transactional Web site, and via a toll free customer service line. These delivery channels are available at kiosks located on the premises of retail stores for which the bank has a joint marketing arrangement. The bank will operate under a brand name associated with the retail store partner. Conditional Approval No. 313 (July 9, 1999).
- *Internet Bank, Small Business Focus.* NBs may establish Internet banks that focus on small businesses. Conditional Approval No. 347 (January 29, 2000).

Software Development and Production

- *Software Development and Production.* NB may engage in joint ventures to develop and distribute home banking and financial management software to be distributed through the bank and through retail outlets. Interpretive Letter No. 677, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1995).
- *Investment in Companies that Develop, Distribute, and Support Software.* NBs may invest and take warrants in companies that develop, distribute, and support software that enables secure payments over the Internet. Interpretive Letter No. 868, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,362 (August 16, 1999).
- *Provision of Internet-Based Services to Government Agencies.* NB may acquire a non-controlling interest in a LLC that enters into contracts with

federal, state, and local government agencies to provide a package of Internet-based services, including development of Web sites, hosting of Web sites, and providing related merchant processing services. Interpretive Letter No. 883 (March 3, 2000).

- *Sale of Web Site Software and other Web Site Hosting Services.* NB operating subsidiary may engage in the sale of Web site editing software as part of a bundle of Internet-based Web site hosting services for bank customers. The bank will also use the operating subsidiary to develop new software products to be used by the bank in conjunction with its transaction processing services and in developing its own Internet-based services. Corporate Decision No. 2000-01 (January 29, 2000).

Investments¹

- *Agricultural Credit Corporations.* NBs may purchase stock of a corporation organized to make loans to farmers and ranchers for agricultural purposes. An investment in such a agricultural credit corporation may not exceed 20 percent of a NB's capital and surplus, unless the NB owns at least 80 percent. 12 USC 24(Seventh).
- *Asset-Backed Securities.* NBs may invest up to 25 percent of capital and surplus in marketable investment grade securities that are fully secured by interests in a pool of loans to numerous obligors and in which a NB may invest directly. 12 CFR 1.2(m), 1.3(f).
- *Bank Service Companies.* NBs may invest in bank service companies if the amount invested does not exceed 10 percent of the bank's capital and surplus and all investments in bank service companies do not exceed 5 percent of the NB's assets. 12 USC 1862; 12 CFR 5.35.
- *Bank's Own Stock.* NBs may purchase treasury stock to fulfill a legitimate corporate purpose, including in connection with an employee stock purchase plan, directors qualifying shares, or a reverse stock split. 12 USC 83; Interpretive Letter No. 825, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,274 (March 16, 1998); Interpretive Letter No. 786, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,213 (June 9, 1997); Interpretive Letter No. 660, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,608 (December 19, 1994). NBs may make loans on the security of their own shares pursuant to 12 USC 83 and 12 CFR 7.2019.
- *Banker's Acceptances.* NBs may invest in banker's acceptances created by other nonaffiliated banks without limit, if they are created in accordance with 12 USC 372, and are thus "eligible" for discount with a Federal Reserve bank. But section 372(b), (c) and (d) restrict investment in the aggregate amount of banker's

¹ For investments in partnerships, note that subsidiaries of NBs may become general partners, but NBs may not.

acceptances created by any one bank. Holdings of "ineligible" banker's acceptances must be included in the purchasing bank's lending limit to the accepting bank. 12 USC 84; 12 CFR. 32.

- *Bankers' Banks.* NBs may invest in banker's banks, or their holding companies, in an amount up to 10 percent of the NB's capital stock and unimpaired surplus. In addition, NBs may not hold more than 5 percent of the voting securities of a bankers' bank or holding company. 12 USC 24(Seventh). A bankers' bank may be organized as a NB, and the OCC may waive requirements that are applicable to NBs in general if they are inappropriate for a bankers' bank and would impede the provision of its services. 12 USC 27(b); 12 CFR 5.20.
- *Bank Premises.* NBs may invest in bank premises without OCC approval, if (1) the aggregate amount of the investment is less than or equal to the NB's *capital stock*; or (2) the aggregate amount of the investment is less than or equal to 150 percent of the NB's *capital and surplus*, and the NB is well-capitalized and has a CAMEL rating of 1 or 2, provided that the bank provides the OCC notice 30 days after this investment. Prior OCC approval is required for investments in bank premises that do not meet the above criteria, but the application may be deemed approved after 30 days, unless the OCC notifies the bank otherwise. 12 USC 29, 371d; 12 CFR 5.37, 7.1000; Conditional Approval No. 298 (December 15, 1998).
- *Business Trusts.* NBs may acquire certificates of participation in business trusts created to hold and manage a substantial portion of the bank's investment securities portfolio. Interpretive Letter No. 745, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,110 (August 27, 1996).
- *Corporations that Sell or Lease Check Cashing Machines.* NBs can hold a minority investment in a corporation that sells and leases check-cashing machines to third parties. Conditional Approval No. 307 (March 19 999).
- *Collateralized Bond Obligations.* NBs may purchase marketable, investment grade collateralized bond obligations as Type III investments, even though certain of the underlying assets are not investment grade. Letter from Tena Alexander, Senior Attorney, dated August 3, 1999.
- *Collateralized Mortgage Obligations(CMOs).* NBs may purchase CMOs, which may be classified as Type 1, IV or V securities under 12 CFR 1.
- *Commercial Mortgage-Related Securities.* NBs may invest in certain commercial mortgage-backed securities. 12 USC 24(Seventh); 12 CFR 1.2(l).
- *Commercial Paper (i e., Short-Term, Unsecured Promissory Notes Usually Issued by Companies to Meet Their Immediate Cash Needs).* NBs may hold commercial paper as loans, subject to the lending limits and loan underwriting safety and

soundness standards. 12 USC 24(Seventh) and 84; 12 CFR 1 and 32. NBs may issue commercial paper. Interpretive Letter (May 4, 1973).

- *Consolidation of Public Welfare Investments into CDC.* NB may consolidate its public welfare investment activities in an existing community development corporation ("CDC"). The CDC would manage its portfolio so that the majority of its investments qualify as public welfare investment under 12 C.F.R. part 24. Thus, the CDC would be primarily engaged in making public welfare investment, and the bank's investments in the CDC would be designed primarily to promote the public welfare, as required by 12 U.S.C. § 24(Eleventh). Approval Letter (February 14, 2000).
- *Convertible Securities.* NBs may purchase securities convertible into stock, provided that convertibility is not at the option of the issuer. 12 CFR 1.6.
- *Corporate Debt Securities.* NBs may invest in any corporate debt security, provided the securities are marketable debt obligations that are not predominantly speculative in nature and total investments in any one issuer do not exceed 10 percent of the NB's capital and surplus. 12 USC 24(Seventh); 12 CFR 1.
- *Delinquent Real Estate Tax Liens.* NBs may invest in delinquent real estate tax liens, where state law does not consider such liens to represent interests in real property. Interpretive Letter No. 717, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,032 (March 22, 1996).
- *DPC Stock.* NBs may hold securities acquired through foreclosure or otherwise in the ordinary course of collecting a debt previously contracted (DPC). Such securities may be held 5 years, unless the OCC extends the holding period for up to another 5 years. 12 USC 24(Seventh) (incidental powers clause); Interpretive Letter No. 643, *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 83, 551 (July 1, 1992); Interpretive Letter No. 511, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,213 (June 20, 1990).
- *Deposit Accounts.* NBs also may make deposits in other depository institutions, provided that total deposits in any nonmember bank do not exceed 10 percent of the NB's capital and surplus. 12 USC 463. NBs may purchase notes issued by another bank, affiliate, or bank holding company. Interpretive Letter (October 12, 1970).
- *Foreign Government Securities.* NBs may deal in, underwrite, or invest in securities of Canada and political subdivisions of Canada. 12 USC 24(Seventh); 12 CFR 1.2(i). NBs may also invest in the securities of other foreign governments, provided that the securities are marketable debt obligations that are not predominantly speculative in nature and no more than 10 percent of a NB's capital and surplus is invested in the securities of any one foreign government. 12 CFR 1.2(e), (j).

- *Fund to Acquire Limited Partnership Interests in Native American Affordable Housing.* NB may made an investment in a fund created to acquire limited partnership interests in affordable rental housing properties that are located on, or near Native American reservations in Arizona, Wisconsin, Minnesota, Montana, North Dakota, South Dakota, and Wyoming. The fund's projects qualify for federal low-income housing tax credits and historic rehabilitation tax credits and primarily target low- and moderate-income persons and families. Each project is sponsored by an Indian Tribe, an affiliated Tribal Housing Association, Indian Housing Authority, Indian Tribally-Designated Housing Entity, Indian nonprofit housing corporation, or similar tribal entity. Approval Letter (April 10, 2000).
- *Historic Tax Credit Investment.* NB may invest in Historic Tax Credit investment in the Central Vermont Arts Center Limited Partnership. The Partnership will finance the renovation of a vacant historic property located in an economic revitalization area in Barre City, Vermont. The general partner and project sponsor is a nonprofit corporation that will also lease space for artists and operate an art gallery and teaching facility. The facility will support the establishment of small businesses by providing artists and artisans with studio space and an opportunity to market their work. The proposal was consistent with 12 C.F.R. Part 24 because the project was intended to serve as the cornerstone for renewed small business investment and area revitalization, and the property was located in an area that the local government had targeted for revitalization. Approval Letter (October 19, 2000).
- *Housing Investments.* NBs may invest in various HUD-insured loans and obligations issued by government housing projects. NBs may also invest in state housing corporations, subject to a limit of five percent of the NB's capital stock paid and unimpaired plus five percent of its unimpaired surplus fund. 12 USC 24(Seventh).
- *Insurance Company Products and Investment Funds, Hedging.* NB subsidiaries may hold various insurance company products and investment funds containing bank-ineligible securities to hedge, on a dollar-for-dollar basis, the subsidiary's obligations to make payments to employees under certain deferred compensation plans. Interpretive Letter No. 878, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-375 (December 22, 1999).
- *Insurance, Investment in Company that Provides Marketing and Consulting Services to Insurance Agencies.* NB's insurance agency subsidiaries may acquire a minority interest in a company that provides marketing and consulting services to insurance agencies. Conditional Approval No. 302 (January 21, 1999).
- *Insurance, Investment in Title Agency.* NB's insurance subsidiary may acquire and hold a minority, noncontrolling interest in a title agency. The title agency can offer both lending and owner title insurance policies as agent, in connection with

residential and commercial mortgage loans made by the bank, its affiliates, and by third parties and in cases where no loan is involved. The agency can also provide closing and escrow services and commercial and residential title abstracting services in connection with loans made by the bank, other lenders, and occasionally when no loan is involved. Conditional Approval No. 308 (April 8, 1999).

- *Insurance, Investment in Title Agency and Other Real-Estate Related Activities.* NB's operating subsidiary may hold a minority investment in a company that engages in title insurance agency, real estate appraisal, loan closing, and other real estate loan-related and finder activities. Conditional Approval No. 332 (July 30, 1999).
- *Investment in Bank Holding Company as Consideration for Sale.* Where a group of financial institutions that jointly owned an EFT network was selling the network to a bank holding company, several NB members of the group may acquire small equity interests in the bank holding company as consideration for their interests in the network. Interpretive Letter No. 890 (May 15, 2000).
- *Noncontrolling Minority Interests (including limited liability companies).* NBs may acquire noncontrolling minority investments in business entities if the entities: (1) engage in activities that are limited to those that are part of or incidental to the business of banking (or otherwise authorized for a NB), (2) the NB can prevent the company from engaging in activities that are not part of, or incidental to, the business of banking or be able to withdraw its investment, (3) the NB's loss exposure is limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligation of the enterprise; and (4) the investment is convenient or useful to the bank in carrying out its business and is not a mere passive investment unrelated to that NB's banking business. Conditional Approval No. 371 (March 20, 2000). The following are examples of these investments:
 - *Investment in LLC (Automobile Loans).* NBs can acquire a noncontrolling investment, through an operating subsidiary, in an LLC that provides automobile loans. Loan customers are people, who purchase cars over the Internet from other, nonbank investors in the LLC. Conditional Approval No. 321 (July 28, 1999).
 - *Investment in LLC (Cash Management, Electronic Payment, Information Reporting, and Data Processing Services).* NB's operating subsidiary can assume noncontrolling investments in limited liability companies that conduct cash management, electronic payment, information reporting, and data processing services. Conditional Approval Nos. 324 (August 17, 1999); 333 (Oct. 19, 1999).

- *Investment in LLC (Credit Reporting Services).* NB's operating subsidiary can hold a minority interest in a limited partnership to provide credit reporting services to the bank, its subsidiaries, affiliates, and eventually to non-affiliated creditors. Conditional Approval No. 336 (November 2, 1999).
- *Investment in LLC (Electronic Commerce).* NBs may acquire minority, noncontrolling interests in LLCs that provide electronic commerce services and financial application software and related products. Interpretive Letter No. 289 (May 15, 1989).
- *Investment in LLC (Loans to and Investments in Medium and Small-Sized Businesses).* NBs can acquire noncontrolling ownership interests in LLCs that make loans to and qualifying investments in small- and medium-sized businesses and invest in a small business investment company ("SBIC"), which, in turn, will make loans and invest in securities permissible under the SBIC Act. Conditional Approval No. 305 (March 15, 1999).
- A SBIC is a privately organized and managed venture capital firm that is licensed and regulated by the SBA. A SBIC provides equity capital, long-term loans, debt-equity investments, and management assistance to qualifying small businesses, subject to significant regulatory restrictions. A SBIC is subject to limitations on the size and type of small businesses in which it may invest. Companies eligible for SBIC investments must have a net worth of under \$18 million and under \$6 million in net income at the time the investment is made. A NB's aggregate SBIC investments are statutorily limited to 5 percent of the bank's capital and surplus.
- Generally, a SBIC may invest in a variety of types of companies not limited to those that are financial in nature, but a SBIC may not invest in: other SBICS, finance and investment companies or leasing companies, unimproved real estate, companies with less than one-half of their assets and operations in the United States, passive or casual businesses (those not engaged in regular and continuous business operation), or companies that will use SBIC proceeds to invest in farmland.
- A SBIC may not have a controlling interest or own more than 50 percent of the voting equity of a company, in which it invests unless the SBIC has a plan of divestiture. In the latter case, the SBIC may have a controlling interest for up to seven years.
- A SBIC also must have experienced and qualified management, and to maintain diversification between a SBIC's investors and its

management. In addition, a SBIC must conduct frequent investment valuations, file annual financial reports with the SBA, and submit to biennial compliance examinations by the SBA.

- *Investment in LLC (Origination of Residential Loans).* NBs may make a direct, non-controlling investment in an LLC with an unaffiliated mortgage company as the other investor. The LLC can engage in the origination of residential mortgage loans with resale to investors in the secondary market. Interpretive Letter No. 853, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,310 (February 16, 1999).
- *Investment in LLC (Title Insurance).* NBs can acquire a noncontrolling interest in an LLC that engages in title insurance agency activity, loan closing, and other activities in connection with consumer and commercial loans made by the bank or the bank's lending affiliate. Interpretive Letter No. 842, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,297 (September 28, 1998).
- *Money Market Preferred Stock.* NBs may invest in money market preferred stock as Type III investment securities, provided the investment is marketable and not predominantly speculative in nature. Interpretive Letter No. 781, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,208 (April 9, 1997).
- *Mutual Fund Shares.* NBs may purchase for their own accounts shares of any "investment company," with certain limitations. Shares of investment companies whose portfolios contain investments subject to the limits of 12 USC 24 may only be held in an account not in excess of either: (1) the amount equal to the appropriate investment limit for each security in the investment company or applied to the aggregate amount of the bank's *pro rata* holdings of that security in the investment company and the NB's direct holding of that security; or (2) the most stringent investment limitation that would apply to any of the securities in the investment company's portfolio if those securities were purchased directly by the NB. 12 CFR 1.4(e).
- *Other Issuers.* If an issuer does not fall within specified criteria for other categories of investment securities, a NB may treat a debt security as an investment security for purposes of Part 1, if the NB concludes, on the basis of estimates that the bank reasonably believes reliable, that the obligor will be able to satisfy its obligations under that security, and the NB believes that the security may be sold with reasonable promptness at a price that corresponds reasonably to its fair value. The aggregate par value of these securities may not exceed 5 percent of the NB's capital and surplus. 12 CFR 1.4(i),

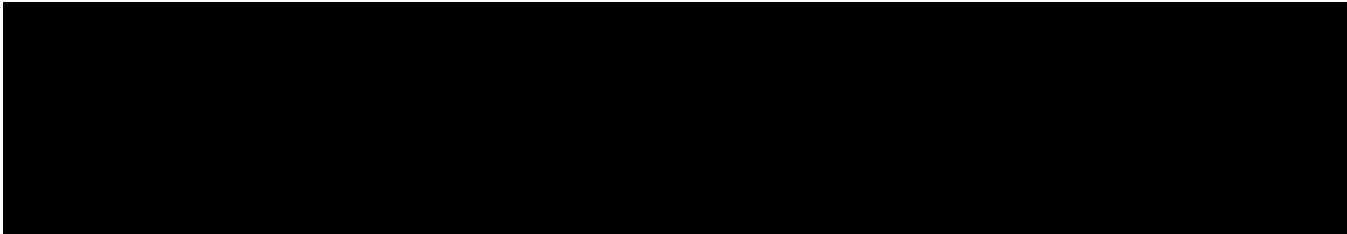
Interpretive Letter No. 779, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,206 (April 3, 1997).

- *Performance Note Loans (PNLs)*. NBs may purchase PNLs, issued by affiliates of private mortgage insurers, as loans. A PNL is a debt security bearing a variable interest rate linked to the performance of the mortgage loans that the lender originated and the mortgage insurer insured. Interpretive Letter Nos. 833, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,287 (September 4, 1998), 834, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,288 (July 8, 1998).
- *Public Welfare Investments*. NBs have express authority to invest, directly or indirectly (such as through community development corporations), in investments designed primarily to promote the public welfare. These investments are limited to 5 percent of the NB's unimpaired capital stock (actually paid in) and surplus fund. However, the OCC may approve investments up to a total of 10 percent of unimpaired capital and surplus for NBs that are at least adequately capitalized, if the OCC determines that an investment over the five percent limit will pose no significant risk to the deposit insurance fund. In no case may a public welfare investment expose a NB to unlimited liability. 12 U.S.C. 24(Eleventh).
- *Public Welfare Purpose*. By regulation, public welfare investments must primarily benefit low- and moderate-income individuals, low- and moderate income areas, or other areas targeted for redevelopment by local, state, tribal or Federal government (including Federal enterprise communities and Federal empowerment zones). 12 C.F.R. 24.3(a). A majority of the activities of an investment must benefit the targeted beneficiaries in order for the activity to be designed primarily to promote the public welfare, but the remainder of the activities need not. Interpretive Letter No. 837, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,291 (September 4, 1998).
- *Public Welfare Activities*. The types of activities that are considered to be public welfare investments include, but may not be limited to, those that provide or support affordable housing, community services, or permanent jobs for low- or moderate-income individuals; equity or debt financing for small businesses; and area revitalization or stabilization. 12 C.F.R. 24.3(a). For example, NBs may invest in limited partnerships investing in affordable housing projects approved for low-income housing tax credits. E.g., letter from Janice A. Booker, Director, Community Development Division, to Yasumasa Gomi, Chairman of the Board, President and CEO, The Bank of California (December 22, 1992). A NB also may make an equity investment in a real estate investment trust that focuses primarily on community development activities, such as making investments in and purchasing loans that will benefit low- and moderate-income individuals and areas. Letter from Janice A. Booker, Director, Community Development Division, to Michael E.

Bleier, General Counsel, Mellon Bank (February 25, 1999). NBs may also invest in and form community partnerships with community development financial institutions. Letter from Janice A. Booker, Director, Community Development Division, to Larry Hawkins, President, Unity National Bank (November 16, 1998).

- *Real Estate (Non-Thrift/Bank Premises).* Aside from property necessary for the transaction of its business, the authority of NBs to purchase and lease real estate has been limited to special circumstances, including purchasing and leasing real estate for municipal purposes (including purchasing vacant land for this purpose) and purchasing residences of bank employees who have been transferred. In addition, NBs may purchase, hold, and convey real estate as mortgaged to them or conveyed as security for or in satisfaction of debts previously contracted, and as purchased at sales under judgments, decrees, or mortgages held by a bank or to secure debts due to it. NB may not hold real estate conveyed to it to satisfy debts previously contracted for longer than 5 years, unless a period of up to an additional 5 years is approved by the OCC. 12 USC 29; 12 CFR 7. 1000; Interpretive Letter No. 847, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,302 (October 28, 1998).
- *Reinsurer, Holding Noncontrolling Interests.* NBs may hold a noncontrolling interest in an insurance company that reinsures mortgage life, mortgage accidental death, and mortgage disability insurance on loans originated by the lenders with an ownership interest in the insurance company. Interpretive Letter No. 835 *reprinted in* [1998-99 Transfer Binder] Fed. Banking L. Rep. (CCH) 81-289 (July 31, 1998).
- *Residential Mortgage-Related Securities.* NBs may invest in certain investment grade residential mortgage-related securities. 12 CFR 1.2(I)(e).
- *Small Business Investments.* NBs may invest in investment grade small business-related securities that are fully secured by interests in a pool of loans to numerous obligors. NB investments in securities of any one issuer rated investment grade in the third or fourth highest categories may not exceed 25 percent of the NB's capital and surplus. In addition, NBs may invest in small business investment companies (SBICS) in an aggregate amount of up to 5 percent of the NB's capital and surplus. 12 USC 24(Seventh); 12 CFR 1.3(a); Interpretive Letter No. 373, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,543 (November 13, 1986).
- *Stock in Life Insurance Underwriter.* NB may accept and retain stock in a life insurance underwriter that it received as a result of being a policyholder of the company, which was converting from mutual to stock form ("demutualization"). Interpretive Letter 901 (June 29, 2000).

- *Trust Bank Stock.* NBs may establish operating subsidiaries to serve as a general partner in a partnership that will own a trust company. NBs may acquire a minority interest in a limited purpose trust bank. Interpretive Letter Nos. 697 *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,012 (November 15, 1995), 83 1, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,285 (June 8, 1998).
- *Trust Preferred Securities.* NBs may invest in trust preferred securities as type 1.11 investments that meet applicable rating and marketability requirements. Interpretive Letter No. 777, *reprinted in* [1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,204 (April 8, 1997).
- *U.S., State, and Local Government Securities.* NBs may invest in securities issued or guaranteed by the U.S. or any agency of the U.S., as well as general obligations of any state or political subdivision thereof and the Washington Metropolitan Area Transit Authority. 12 USC 24(Seventh); 12 CFR 1.
- *U.S. Government-Sponsored Corporation Securities.* NBs may invest, without limitation, in obligations of Fannie Mae, Ginnie Mae, Freddie Mac, Sallie Mae, FHLBanks, Federal Finance Bank, and Farmer Mac. 12 USC 24(Seventh). NBs may purchase preferred stock of Freddie Mac and Sallie Mae. Interpretive Letter (December 3, 1992); Interpretive Letter No. 577, *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,347 (April 6, 1992). NBs may invest in the stock of FHLB, in excess of minimum membership requirements. Interpretive Letter No. 755, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,119 (October 3, 1996). NBs may purchase stock of Fannie Mae, Interpretive Letter No. 427 *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 7, 1988), and Fannie Mae, 12 USC 1718(f). In addition, NBs may invest in obligations of the TVA, Postal Service, and various international development banks, provided investments in any one of these latter entities do not exceed 10 percent of capital and surplus. 12 USC 24 (Seventh); 12 CFR 1.20). NB may hold up to 5 percent of its capital and surplus in stock of State Housing Corporations. 12 USC 24(Seventh).
- *Warrants for Common Stock.* NBs may establish operating subsidiaries to acquire warrants for common stock. Conditional Approval No. 319 (July 26, 1999).



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